LYTTILTON TENURES.

truly tranſlated into Engliſhe.

Anno domini.

M.D.L.VI.

Fee simple.

Estate of inheritaunce

Fee tayle.

After the common lawe.

Franketenement onely.

Franketenement.

Generall

Especial after possibilitye of issue

Curtesie of Englande.

Dower.

Terme of life.

Terme of others lyfe.

Possession of

After the custome.

¶ Also note here, that Franketenement after the custome, maye be deuided in lyke maner as Franketenement by the common lawe is.

Terme of yeres.

Reall.

Warde of lande.

To holde at wil.

Chatell.

Personall.

All goodes mouables.

The first Chapiter.

TEnant in fee simple is he which hath landes or tenementes to hold to him and to his heires for euer. And is called in latin feodum simplex for feodum is called inheritance, and simplex is as muche to say as lawfull or pure, and so feodum simplex is as much to say as lawfull or pure inheritance. For if a man will purchase landes or tenementes in fee simple it behoueth him to haue these wordes in his purchase, to haue and to holde to him and to his heires. For these wordes his heires make estate of inheritance. What is fee simple

In. 20. H. 6. fol. 38.

For if any man purchase landes by these wordes, to haue and to hold to him for euer, or by suche wordes, to haue and to holde to him and to his assignes for euer. In these .ii. cases he hath none estate but for terme of life, for that, that he lacketh these wordes, his heires, the whiche wordes onely, maketh the estate of inheritance, in al feoffementes & grauntes.

And if a man purchase lād in fee simple & die without issue, any that is his nerte cosin collaterall of the whole bloud, how farre soeuer that he be frō him in degree

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may inherite, and haue the same land, as heyre to him. But if there be father & son and the father hath a brother, whiche is vncle vnto the sonne, & the sonne purchaseth lande in fee simple, and dieth without issue, his father liuing, ỹ vncle shall haue the lande, as heire to the sonne, and not the father yet ỹ father is more nere of bloud for ỹ there is a ground in the lawe that inheritance may lineally descend, but not lineally ascend. Yet if the son in suche case dieth without issue, & his vncle entreth into the landes, as heire to the son, so as he ought by the law, & after ỹ vncle deceaseth without issue, ỹ father liuinge, then shal the father haue the land as heir vnto the vncle, and not as heire vnto his son, for ỹ that he commeth vnto the lande by collateral discent, & not by lineal ascecion. And in such case where the son purchaseth lande in fee simple, & dieth wout issue, thei of his bloud of the fathers side shall inherite, as heires vnto him before any of the bloud of ỹ mothers side. But if he haue none heire on the fathers syde then shal the land descende vnto his heyres on the mothers side, and this is the opinion of al iustices, Mich. 12. E. 4. fo. 14. But there it was holden, if land descende to a man by the fathers side, whiche dieth without issue, that his nexte heire of the

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fathers

fathers ſide, ſhall inherite vnto him (that is to ſay) the next heire ẏ is of the bloud of the father, of the grandfathers ſyde, & for defaut of ſuch an heyre, they ẏ be of ẏ fathers bloud of the part of the mother, of the father, that is to ſay, the grādmother ought to inherite. And if there be no ſuche heyre on the fathers ſide, thē the lord ſhal haue the lande by eſchete. And ſo it is if a man take a wife inherite in fee ſimple, which haue iſſue a ſon, and die, & the ſon entreth into the tenementes, as ſon and heire to his mother & after dieth without iſſue, the heirꝛ on the mothers ſide, ought to inherite the tenementes, and not the heyres of the fathers ſide: and if there be none heires on the mothers ſide, then the lord, of whom the ſame lād is holdē, ſhall haue the ſame land by eſchete. In ẏ ſame maner it is, if landꝛ deſcend vnto the ſon on the fathers ſide, & entreth, & after dieth without iſſue, the lande ſhall deſcend vnto the heirꝛ on the fathers ſide, & not to ẏ heirꝛ on the mothers ſide. And if there be none heirꝛ on the fathers ſide thē the lord of whō the lād is holdē ſhal haue ẏ ſame land by eſchete. And ſo ye may ſe the diuerſitie, where ẏ ſon purchaſeth landꝛ or tenementꝛ in fee ſimple, & wher he cōeth into thoſe landes or tenementꝛ, by diſcēt on the fathers ſide, or on ẏ mothers ſide.

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Diuerſitie.

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Also if there be three bretherne, and the middell brother purchaseth lande in fee simple, and dieth without issue, the elder brother shall haue the lande by discente and not the ponger.

The elder sonne is more worthy of bloud.

And also if there be three brethren, and the pongest brother purchaseth land in fe simple, and dieth without issue, the elder brother shal haue the land by discent, and not the middell brother, for that, that the elder brother is more worthy of bloud.

And it is to be vnderstande, that no mā shal haue land in fee simple by discēt, as heire vnto any man, but if he be his heire of the whole bloud. For if a mā haue issue ii. sonnes by two venters, & the elder purchaseth lande in fee simple, & dieth without issue, the yōger brother shal not haue the lande, but the vncle of the elder brother, or some other his nighe cousin shall haue it, for that, that the ponger brother is but of the half bloud to the elder brother

And if a man haue issue a son & doughter by one venter, and a son by another venter, and the son by the first vēter purchaseth lande in fee simple, & dieth without issue, the sister shall haue the land by discente, as heire vnto her brother, & not the pongest brother, for that, ỹ the syster is of the whole bloud to her elder brother

And also where a man is seysed of land

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in fee simple, and hath issue a sonne and a doughter by one venter, & a son by an other venter and dieth, & the elder son entreth & dieth without issue, the doughter shal haue the lād, & not the yonger sonne and yet is the yonger son heyre vnto his father, but not to his brother. But if the elder son enter not into the land after the death of his father, but dieth before anye entre made by hym, then the yonger brother may entre & haue the lande as heyre vnto his father. But where the elder son in the case aforesaid, entreth after ẏ death of his father, and hath possession, then the sister shall haue the lande. Quia possessio terraris de feodo simplici facit sororē esse heredem. For the possession of the brother in fee simple maketh the sister to be heyre. Cap.2.

But if there be.ii. brethren by dyuers denters, & the elder is seased of the lande in fee simple, & dieth without issue, and his vncle entreth as nexte heyre vnto the elder brother, whiche also dieth without issue, thē the yonger brother maye haue ẏ lande, as heyre vnto his vncle, bicause he is of ẏ whole bloud to hym, though he be but of halfe bloud vnto his elder brother. Maxime. Inn.40. E.3. Folio.9. by Fencol. And the same king anno.2. Folio.7.

And it is to be vnderstād, ẏ this worde inheritance, is not only vnderstād where a man hath landes or tenementes by discent of heritage, but also euery fee simple What is inheritāce.

Cap. 11 the forme of a writ.

or fee taile, ỳ a man hath by his purchase may be sayd inheritance, for that that his heyres may inherite him. For a writte of right that a man bringeth of land, ỳ was of his owne purchase, the writ shall say. Quam clamat esse ius ꝛ hereditamen suam, that is to saye, whiche he claimeth to be his right, ꝛ his inheritaunce. And so it shalbe sayd in diuers other writs, which a man or a woman bringeth of his own purchase, as it appeareth by the register.

And of suche thynges as a man maye haue a manuel occupation, possessiõ, or reyte, as of landes, tenementes, rentes, ꝛ such other, a man shal say in his pleding ꝛ in the way of barre, that such was seased in his demesne as of fee. But of suche thinges, ỳ lie not in such manuel occupation. ꝛc. as of auoulson of a church ꝛ suche lyke, he shall say, that he was seased as of fee, ꝛ not in his demesne as of fee. And in latin it is in one case. Quod talis fuit seisitus in dominico suo vt de feodo, that is to say, that such one was seased in his demesne, as of fee, ꝛ in the other case. Quod talis fuit seisitus, ꝛc. vt de feodo, that is to saye, that one suche was seased as of fee.

The most great inheritaunce.

And not well, that a man may not haue a more large ne greater estate of inheritaunce, then fee simple.

Purchase.

Also purchase is called the possession of landes

landes or tenemētes that a man hath by hys dede, or by his agremēt, vnto whiche possession he commeth not by discente of any of his auncesters, or of his cousins, but by his owne dede. Cap.xi.

Tenaunt in fee tayle. Cap.ii.

TEnant in fee tayle is by force of the statute of Westminster second Ca. i. for at the common law before the sayde statute, all inheritaunce were fee simple, for all the giftes, whiche ben specified within the same Statute, were fee simple sōdicionally, as it appereth by the rebersal of the same statute. And now by the same statute, tenant in the tayle is in two maners that is to say, tenāt in taile general, and tenant in tayle speciall. Diuision.

Tenant in tayle generall, is where lādes or tenementes be giuen to a man and to his heyres of his body begotten. In thys case it is sayd generall tayle, for that that whatsoeuer woman, that suche tenaunt taketh vnto wife, if he haue many wiues and by eche of them hath issue, yet euery one of these issues by possibilitie may inherite the tenementes by force of the sayd gyfte, bycause that euery suche issue is of his body engendred. Generall tayle.

In the same maner it is, where landes & tenementes be giuen to a womā, & to the heyres of her body, although she haue di-

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ners husbādes, yet the issue that she may haue by ech husbād, may inherite as issue in the taile by force of ỹ said gift. And ther fore in such giftes he called general taile.

Speciall tayle.

Tenaūt in taile special is where lādes and tenementes be gyuen to a man and to his wyfe, and to the heyres of their .ii. bodies begotten. In suche cas none may inherite, by force of the sayde gyfte, but those that be engendred betwene theym two. And it is called a speciall tayle, for ỹ if the wife dye, & he taketh another wife, and hath issue, the issue of the secōd wife shal neuer inherite by force of such gyfte. Nor also the issue of the second husband, if the first husband dye.

Franke mariage maye be made as wel after the espousell as a fore. H.4. G.5.

In the same maner it is, where landes & tenementes be gyue by a man vnto an other with a wife, which is the doughter or cosin to the giuer, in franke maryage, whiche gifte hath inheritaunce by these wordes, frankemariage, vnto it annexed althoughe that be not expressely sayde or rehersed in the gifte that is for to say that these donees shal haue these landes or tenementes to them and two theyr heyres betwene them two engēdred, and this is sayd especial taile, for that the issue of the seconde wyfe may not inherite. &c. vt sup.

What fee tayle is.

And note well ỹ this worde talliare, is to say, to set vnto some certaynetye, or els limitte

limitte vnto some certayne inheretance. Cap. 2.

And for that, that is limitted and set in certaine what issue shal inherite by force of such giftes, and how longe that the inheritance shal endure, therefore it is called in latin. Feodum talliatum. i. hereditas in quadam certitudine limitata. For if tenant in generall die without issue, the donour of his heires shall inherit as their reuertion. In the same wise is of the tenant in the tayle special. &c. For in euery gift in tayle without more layeng the reuersion of fee simple is in ỹ donour and the donees, and their heyres, shall do to the donour and to his heyres, such seruices as the donour doeth vnto his lorde nexte aboue him. Excepte the donees in frankemariage, which shall holde quietly from euery maner of seruice (but if it be for fealtie) vntill the fourth degree be paste. And after that the fourth degree be past, the issue in the. v. degree, & so foorth the other issues after him shall holde of the donour and of his heirz, as they holde ouer, as is aforesaide.

By what seruices the tenantes in tail shal holde of their donour.

And these degrees in frankmariage shal be accompted in such maner, ỹ is to saye, from ỹ donour to the donees in frākmariage the first degree, for ỹ, that the wife ỹ is one of ỹ donees, ought to be the doughter sister, or other cousin to the donour, & from

How the degrees in frankmariage shall be accompted.

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And the cause is, for that after euerie such gifte, the issues that come of the donour, and the issues that come of the donees, after the. 4. degree past of both parties in suche forme to be accompted, may betwixt them by the law of holy churche entermary. And that the donee in frankmariage, shalbe the first degree of the. iiii. degrees, a man may see in a plee vpon a writ of right of warde, where the plaintife pleaded, that his tayle or graundefather was seased of certaine landes. &c. And that he helde of an other by knighte seruice, &c. which gaue the land vnto one Rafe holland, with his sister, in franke mariage. &c. All these tales beforesayd, be specified in the sayd statute of Westminster the seconde.

An. 31. E. 3.

Equity of the statut. Also if there be diuers other estates in the tayle, which be not specified by expres wordes in the sayde statute, but they be taken by the equitee of the sayde statute. As if land be giuen vnto a man, & to his heires males of his body engendred, in such case his heyre male shal inherit, & ỹ issue female shal neuer inherit yet i these other tailes aforesaid, it is otherwise.

In

In the same maner it is, if landes be- Cap.2.
giuen to a man, & to his heires females, of his body ingendred, in this case his issue female shal inherite by force & forme of the sayd gifte, and not the issue male, for that, that in suche cases, where the gifte is made in tayle, who ought to inherite, and who not, the will of the donour shalbe obserued.

The wyll of the donour in al thinges shalbe obserued.

And in case where landes or tenementes be geuen to a man, and to his heires males issuyng of his bodye, and he hath issue two sonnes, and deceaseth the elder son entreth as heire male, & hath issue a doughter, and deceaseth, his brother shal haue the lande, and not the doughter for that that the brother is heyre male. But in these other tayles which ben specified in the sayd statute, the doughter shal inherite before the brother.

Also if land be giuen vnto a man, and to his heires males of his body engendred, and he hath issue a doughter, which hath issue a son, and deceaseth, and after that the donee deceaseth. In this case the son of the doughter shal not inherite by force of the tayle, for ỳ, that whosoeuer shall inherite, by force of a gifte in the tayle made vnto the heires males, behoueth to conuey his discent alway by the heires males. But in suche case ỳ donour shal enter for

Tayle vnto the heires males

M. 8. E. 4. fol. 45.

Cap. 2. The discent of the heirs male. Whē the husbande hathestate in tayle, & when the wife.

for that, that the donee is dead without issue male in the law. In so muche ỹ the issue of the doughter may not conuey to him the discente of the heire male.

And in the same maner it is where lādes be geuen to a man & his wife, and to his heirs males of their .ii. bodies ingendred.

Also if tenementes be geuen to a man and to his wife, & to the heirs of the body of the man ingendred, in this case the husbande hath estate in the general taile and the wife but estate for terme of life.

Also if landes be giuen to the husbande and to the wife, and to the heyres of the husband, which he ingēdreth of the body of the wife. In this case the husband hath estate in the speciall taile, and the wyfe but for terme of lyfe.

And if the gifte be made to the husband and to the wyfe, and to the heyres of the wife of her body by the husbande ingendred, then the wife hath estate in the speciall tayle, and the husband but for terme of life.

An. 32. H. 4. fol. 1. Twise alleaged, 13.

But if landes be geuen to the husband and the wife, & to the heires that the husband ingendreth on the body of the wyfe. In this case both haue estate in the tayle for that this worde heires, is not limitted no more to the one then to the other.

Also if landes be geuen to a man, & his heyres

heires ẏ he engendreth on the body of hys wife, in this case the husband hath estate in the taile special and the wife nothing. Cap.21

Also if a man haue issue a sonne and dyceasseth, and the lande is geuen to the sonne and to the heyres of the body of his father ingendred, this is a good taile and yet the father was dead at the time of the gyfte.

And many other estates in the tayle there be by the equitie of the sayde statute that be not specified here. But if a man gyue landes or tenemētes to another to haue and to holde to him & to his heyres males or to his heirs females, he to whō suche gifte is made, hathe fee simple for that that it is not lymitted by the gifte of what bodye the issue male or female shal be: and so it maye not in any thing be takē by the equitie of the sayde estatute and therfore he hath fee simple. Fee simple condicionally.

¶ Tenaunt in taile after possibilitie of issue extinct. Cap.iii.

Tenant in the taile after possibility of the issue extinct, is where as lādes or tenemēts be geuen to a mā, and hys wife in special taile, if one of thē deceasse without issue, he that suruiueth tenāt in the taile after possibility of issue extinct. And if they haue issue during the life of the issue, he that suruiueth shal not be

Cap. 3. be sayd tenant in the tayle after possibility of issue extincte. Yet if the issue decease without issue, so that there be none a liue ỳ maye inherite by force of the taile, then he ỳ suruiueth of the donees is tenant in the taile after possibility of issue extinct.

Also if landes be geuen to a man, & to his heyres that he engendred on the bodie of hys wyfe, in this case the wyfe hathe nought in the tenementes but the husbād is sealed as donee in the special taile. And in this case if the wife decease without issue of her body ingendred by her husbād then the husbande is tenaunt in the tayle after possibility of issue extinct.

Maxime. And note wel that none may be tenant in the tayle after possibilitye of issue extincte, but one of the donees, or the donee in special tayle, for the donee in generall tayle may neuer be sayde tenaunt in the tayle after possibilitye of issue extyncte, for that, that alwaye durynge his life, he may by possibilitee haue issue that maye inherite by force of the same tayle. And so in the same maner the issue ỳ is heyre vnto the donees in a special tayle, maye not be sayde tenaunt in tayle after possybilitie. &c. causa qua supra.

An. 10. H. 6. folio. 1. Also tenant in taile after possibilitie of issue extincte, shall neuer be punished of wast for ỳ inheritāce ỳ ones was in him.

But

he in the reuercion may entre, if he doth alyene in fee. An. 4. E. 3. Folio. 22. Chap. 4.

Tenant by the curtesy of England. Ca. iiii.

TEnant by the curtesy of England is where a man taketh a wife seased in fee simple, or in fe taile general, or seased as heire in the taile special, & hath issue by the same wife male or female the issue after being dead, or aliue if the wife decease, the husband shall holde the lande during hys life by the lawe of England. And this is called tenaũt by the curtesy of England for that that it is not vsed in none other realm, but only in Englãd. And some say, that it shal not be said tenant by the curtesy, but if ẏ the childe that he hath by his wife, be hearde crye for by the crye is the prose, that the child that he had by hys wife was borne.

¶ The tenant in dower. Ca. v.

TEnant in dower is where a mã is seased of certayne lãdes or tenemẽtes in fe simple, or in fee tail general, or as heire in the taile special, & taketh a wife & decesseth, the wife after the decease of her husband, shalbe endowed of the third part of such landes or tenementes that were her husbandes in any time during the couerture, to haue & to holde to the same wife in seueralty, by metes &

boūdes for terme of her life, whether she haue by her husband issue or none, and of what age the wife be, so that she passe the age of.xv. yere at that time of her husbāds death, or els she shall not be endowed.

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Of what age ỹ wife shalbe endowed & howe.

And note well, that by the cōmon lawe the wife shal not haue for her dower but the third part of the tenementes, whiche were her husbandes, duringe the espouselles. But by custome of some countrey she shal haue the halfe and by custome of some towne, or boroughe, she shall haue the whole: And in all these cases, she shall be saide tenaunt in Dower.

An.12.H. Filio 3. by Hauke & Lobyn.

¶Also there is two other maner of Dowers, that is to say, dower called Dowment at the churche doze, and dower called dowment by the fathers assent.

Dower at the church doze.

Dowment at the churche doze, is where a man of full age is seased of fee simple, which shalbe wedded vnto a wyfe, when he commeth vnto the churche dooze to be maried, and there after affiance & truthe made betwene theim, he endoweth his wyfe of his whole lande, or of the half or lesse parcell, and there openlye declareth the quantitie and the certeyntie of hys lande, that she shall haue for her dower. In this case the wyfe after the deathe of her husband, shal enter into that said quantitie of land, of which her husband endowed

wed her wout the assignemēt of any mā. Chap. 4.

¶ Dowement by the fathers assente, is where the father is seased of tenementes in fee, and his son and heire apparaunt, when he is wedded, endowed his wyfe at the church doze of parcel of the landes, oz tenementes of his fathers, by thassent of his father, and assigneth the quantytie of the parcelles. In this case after the deathe of the sonne, the wyfe shal enter in the same parcel without the assignement of any other. But it hathe bene sayde in this case, that it behoueth the wyfe to haue a dede of the father, pzouyng his assent and consent of such endowment. M.4 o. E.3. fol. 45.

And if after the death of the husband, she enter and agree vnto any such dower of the sayde two dowers at the church doze, then she is concluded to claime any other dower by the common law of any lādes oz tenementes, whiche were of her sayde husbande. But if she will she may refuse suche dower at the churche doze, and then she may be endowed after the course of ỹ cōmon law. And note well that no wyfe shalbe endowed of the fathers assent in ỹ fozme afozesaid, saue where her husband is sonne & heyze apparant to his father. Inquere in these twoo cases of indowement at the churche doze, if the wyfe at ỹ tyme of the death of her husbande, passe

Dowerby ỹ fathers assent.

M.12 E.4 Which do agree vnto the same Rule Inquere.

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not the age of. xv. yeares, if he shall haue such dower or no.

Wher as the wife may entre in her dower without assignemente: wher not.

¶ And note well that in all cases where the certeyntie appereth, what landes or tenemētes the wife shal haue for her dower, the wife may enter after the death of her husband, without assignement, of any other. But where the certeyntie appereth not, as to be endowed of the third part, to haue a seueraltye, or to be endowed of the halfe, after the custome to hold in seueralty. In suche cases it behoueth the her dower be vnto her assigned, after that death of her husband, because it is not limitted before the assignement what part of landes or tenementes, she shall haue for her dower. But if there be two toyntenantes of certayne landes in fee, and the one alieneth ỳ that to him perteyneth and belongeth to an other in fee, which taketh a wife, and after dieth. In thȳ case the wife for her dower shal haue the thirde parte of the halfe that her husband purchased to hold in commune, and occupy in cōmune, as her part amounteth with the heire of her husband, and with the other toyntenant which alienen not for that in such case her dower may not be assigned by metes and boundes.

F. 49. E. 3. fo. 23. by Fencot.

The wife shal not be

And it is to be vnderstande, that the wife shal not be endowed of landes or tenementes

nementes, that her husband iointly held with another at the tyme of hys death. But where he holdeth in common, it is otherwise, as in the next case aforsayde, Cap. 5. Endowed of the iointe estate of her husbande

And it is to wit, that if the tenaunte in tayle endow hys wife at the church doze as it is aforsayde, that shal serue for lytle or nought to the wyfe, for that, that after the death of her husbande, the issue in the tayle may enter vppon the possessyon of the wife, and so may he in the reuertyon if there be none issue in the tayle alyue. An.14.H. 4. fol.14.

Also yf a man seased in fee symple beinge within age, endowe his wife at the churche doze, and dieth, and the wyfe entreth. In thys case the heyre of the husbande may put her oute. But it is otherwise as it semeth wher the father is seased in fee, and the sonne within age endowe hys wife of his fathers assent, the father then beinge of full age. where assignement of dower shalbe voyd by reason of withi age.

Also there is another Dower whiche is called Dowmente de la plus beale. and that is, as in suche case that a man is seased of foztye acres of lande, and he holdeth twenty of the sayde foztye acres of one man by knyghtes seruice, and the other twentye acres of another in Socage, and taketh a wife, and hath issue a son, and dieth, his son beinge within the age of xiiii. yeres, and the lozd of whom dower de la plu. beale.

Cap. 5. the lande is holden by knyghtes seruyce, entreth into the twentie acres of lande, holden of hym, and then hathe and occupieth as wardein in chiualry duryng the chyldes nonage, and the chyldes mother entreth in the remnaunte, and it occupyeth as gardeyne or wardeyne in socage. If in this case the wyfe bryng a wryte of Dower against the wardeine in Chiualry to be endowed of the tenementes holden by knyghtes seruyce, in the kynges court or in any other court, the wardeine in chiualrye may pleade in such case all ỹ matter, and shewe howe the wife is wardeyn in socage, as it is aforesayd, & praye that it may be aduiged by the court, that the wyfe endow her self of the most fayre called plus beale, of the tenementes that she hath as wardeyn in socage, after the value of the thirde part that she claymeth to haue of the tenementes holden in chiualry by her wryght of Dower.

And if the wyfe may not gainsay it, then the iudgement shalbe made, that the wardeen in chiualrie shall holde the landes holden of hym, during the nonage of the childe quite from the woman. &c.

And after suche iudgement geuen, the wyfe may take her neyghbours, and in their presence endowe her selfe by metes & boundes of ỹ fairest part of these tenementes

ments ẏ she hath as a wardein in socage to the value of the third parte of the landes, that the wardeine in chiualrye hath, and those to haue and to hold for terme of her life. And such dowers is called dower of the fayrest part, or de plus beale. Cap. 5.

¶ With this agreeth. P. 45. E. 3. folio. 4

¶ But there it was sayde, that after the time that the heyre came to his full age, the wyfe shal haue a newe action of dowrye againste the heyre, to be endowed of the thyrde parte of all that her husbande died seased of.

And note wel that such dowment may not be, but where the iudgement is geuē in ẏ kinges court, or in some other court. And the wife may do this for the saluatiō of the state of the warden in chiualry during the nonage of the childe. And so may ye see. v. maner of dowers, that is to say, dowment by the common law, dower by custom, dower at the church dore, dower of the fathers assent, & dower of the most fayre: And remember that in euery case wher a man taketh a wyfe seased of such estate of tenementes. &c. so that the issue ẏ he hath by his wyfe maye, by possibilitie inherit ẏ same tenementes of such estate that the wyfe hath, as heyre to the wyfe.

Fiue maner of dowers.

Tenaunt by curtesy.

In suche case after the wyfe is deade he shall haue the same tenementes, by

Cap. 5. the curtesy of England & otherwise not.

Maxime. ¶ And also in euerye case, wher the wife taketh an husband seased of such estate of tenementes. &c. so that by possybilyty it maye hap the wife to haue some issue by her husband, and that the same issue may by possibility inherite the same testamentes of such estate that the husband had, as heire to his father, of such tenements she shal haue her dower, and otherwise not. For if the tenementes be giuen to a man and to the heyres that he getteth on hys wiues body, in such case the wife hath nothing in the tenemētes, & the husbād hath estate but as donee in speciall tayle, yet if the husbād die wout issue, the same wife shalbe endowed of the same tenementes for that the issue, that she by possibility myght haue had by the same husbande, maye inherite the same tenementes. But if the wife decease, the husbande liuinge and after he taketh another wife, the seconde wife shall not be endowed in thys case, causa qua supra.

In 12. H. 4. fol. 1.

Nota. A man was seased of certayne landes & toke a wife, & after alyened the same landes with warranty, and after the feoffor & feoffee died, & the wife of the feoffoure bringeth an action of dower against the issue of the feoffee & he vouched the heir of the feoffour, & duringe the voucher and

not

not termined, the wife of the feoffee, brin geth an action of dower against the heir of the feoffee, and demaundeth the third parte of al that her husbande was seysed of, and woulde not demaunde the thirde parte of those two partes that her husbād was seised of, it was iudged, ẏ she shuld haue no iudgement, vntill the tyme that the other plee were determined. Capitu. v.

And also note that Vauasour saythe that if a man be seised of lādes, and committeth felonye, and after alyeneth, and after is attaynted, the wyfe shall haue a good action of Dower against the feoffee. But if it be escheted vnto the kynge or vnto the lorde, she shal haue no writte of Dower. And so se the diuersitye, and enquire the lawe.

Tenante for terme of lyfe. Cap. vi.

TEnaūt for terme of life is where a man letteth landes or tenemē tes to another for terme of life of the lesse, or for terme of life of another man. In such case the lessee is tenant for terme of life. But by commen language, he that holdeth for terme of his owne life, is called tenaunt for terme of life & he that holdeth for terme of another mās lyfe, is called tenaunt for terme of another lyfe.

And it is to be vnderstanded, that ther is

Cap. 6. feoffour and feoffee, donoure and donee lessour and lessee. The feoffour is properly where a mā infeoffeth another in any landes or tenementes in fee symple, he ỹ maketh the feoffement is called feoffour, & he vnto whom the feoffement is made, is called feoffee. And the donour is proper ly, where a man giueth certaine landes or tenementes to another in the tayle, he that maketh the gyfte is called donoure, and he to whome the gifte is made, is called donee. And the lessoure is properlye where a man letteth to another certayne landes or tenementes for terme of life, for terme of yeares, or to hold at will, he that maketh the lease, is called lessoure, & he to whom the lease is made, is called lessee And euery one that hath estate in landes or tenementes for terme of his own lyfe, or for terme of an other mans life is called tenant of freehold. And none other of lesse estate may haue freholde, but they of greater estate may haue freehold. For tenaunt in fee simple hath freholde, and tenaunt in tayle hath freehold.

¶ Tenaunt for terme of yeares.

Cap. vij.

Tenaunt for terme of yeres, is wher a mā letteth landes or tenemēts to another, for terme of certaine yeres after the nōber of yeres, that is accorded betwene

betwene the lessoure and the lessee, and when the lessee entreth by force of ỳ lese, then is he tenaunt for terme of yeres, and if the lessour in suche case reserue to hym a yerely rent vpõ such lease he may chose for to distreyne for the rente in the tenementes letten, or els he may take an action of debte for the arrerages agaynst the lessee. But in suche case it behoueth, ỳ the lessour be seased of the same tenemẽts at the tyme of his lease, for it is a good plee for the lessee to saye, that the lessour had nothyng in the tenementes at ỳ time of the lease, excepte the leale bee made by dede indented, in whiche case then suche plee lieth not for the lessee to pleade. Cap. 7.

¶ And it is to be vnderstãd that in a lease for terme of yeres, by dede or wout dede, it needeth nõ liuery of seisin to be made to the lesse, but he may enter whensoeuer he will by force of the same leafe. But of feoffementes made in the countrey or giftes in the tayle or leases for terme of lyfe. In such cases where freholde shall passe, if it be by dede or without dede, it behoueth to haue lyuerie of seisin. &c. Where ly uery of se i sin shal be required, & where not.

But if a man lette landes or tenemẽts by deede or without deede for terme of yeres, the remainder ouer to an other for terme of life or in the taile or in fee, the in such case, it behoueth ỳ the lessour make

liuery

Cap. 7. lyuere of seysyn to the lessee for terme of yeres, or els there shal nothing passe to them in the remaynder, though the lessee enter in the tenementes. And if the fermoure in such case entre before any such liuery of seisin made vnto him, thē is the freehold and the reuercion in the lessour. But if he make any liuery of seysin vnto the lessee, then is the freehold wt the fee to them in the remaynder, after the fourme of the graunte & wil of the lessour. And if any man shal make a feoffement by dede or whithoute dede of landes, or tenemētes that he hath in many townes in one shire if the lyuere of seisin be made in one parcel of the tenements in one town in that name of all it sufficeth for al the other landes or tenementes comprehended in the same feoffemente in al other townes in the same shire. But yf a mā make a dede of feoffement of lands or tenementes in diuers shires, ther it behoueth hi to haue in euery shire a liuerie of seisin. And in such cvle a man shal haue by the graunt of another fee simple, fee tayle or freehold without liuery of seisin.

Exchaūge As if two men be, and eche of them is seased of a quantitie of lande within one shire & the one graunteth his lande to the other in eschaūge, for the land that the other hath, & in the same maner the other

graun-

graũteth his landes to the firſt graũtour in erchaũge for the land that ỹ firſt grã-tour hath. In thys caſe ech may enter in the other landes ſo taken in erchaunge without any liuery of ſeiſin. And ſuch erchange made by wordes of tenementes within the ſame ſhire without any writing is good inoughe. And if the landes or tenementes be in diuers ſhires, that is to ſay, if that the one haue in one ſhire, and the other hath in an other ſhire, there it behoueth to haue a dede indẽted made betwene them of ſuch erchaunge. Cap. 7.

And note, that in erchaunge it behoueth, that the eſtates that bothe partyes haue in the landes ſo erchanged be egal. For if the one willeth & grauneth, that the other ſhal haue his land in the tail for the land that he hath of the graunt of the other in fee ſimple though that the other is agreed to ỹ, yet this erchaunge is but voyde, for that the eſtates be not euen. In the ſame maner it is where it is granted & agreed betwene theim, that the one ſhal haue in the one lande fee tayle, & the other ſhal haue i the other land but terme of life. Or if one ſhal haue in the one land fee tail general, & the other in the other land fee taile ſpecial. So alwayes it behoueth that in erchange the ſtates of both parties be egal, that is to ſay if that one haue

In erchãge the eſtates ought to be egal.

Capitu. 7 haue fee simple in that one land, then the other shall haue such estate in the other land, and if the one hath fee taile in the one land, thē the other shal haue likewise in the other lande. Et sic de aliis statibus

An. 9. E. 4. fol. 41. But it is nothing to charge of the euen value of the landes, for though that the land of that one is much more in value then the land of the other, this is no thing to purpose, so that the estate made by the exchaunge be euen, and so in exchaunge be two graūtes, for euery part graunte the his lande to the other in exchaunge, and in eche of their grauntes mencion shalbe made of the exchaunge.

And if a man let lande to an other for terme of yeres, though the lessour dye be fore the lessee entre into the tenementes, yet may he entre into the tenementes after the death of the lessour, for that, that the lessee by force of the lease hath right incontinente to haue the tenementes after the fourme of the lease.

2 Of possession and seisin. But if a man make a dede of feoffement vnto an other, and a letter of attourney to a man, to deliuer to him seisin by force of the same dede, yet if the liuery of seisin be not made in the life of him that made the dede it auaileth not, for that that the other hath no maner of right to haue the tenementes after the purpose of the dede

before

before the liuery of seisin, &c. And if no liuery be made, then after the death of him that made the dede, the righte of such tenementes is incontinent in his heire, or in some other. Cap. 7.

Also if tenementes be let to a man for terme of halfe a yeare, or for terme of a quarter of a yere, &c. In such case yf the lessee make wast, the lessour shall haue a gainst him a writ of wast, and the writ shal say, Quod tenet ad terminū annorū. But he shal haue a special declaration vp pō the truth of his matter, & the plee shall not abate the writ, for that that he maye haue no other writ vpon the matter. wast a gainste tenaunt for terme of yeares. 3. 4. H. 8. folio. 13. An. 4. E. 4. folio. 19. An. 7. H. 7. folio. 14.

Tenaunt at will, Cap. viii.

TEnaunt at will, is where landes or tenementes be letten by a man vnto an other to haue and to holde to him, at the will of the lessour, by force of which lease, the lessee is in possession. In such case the lessee is called tenaunte at will, for that he hath no certaine sure estate for the lessour may put him out, at what time it pleaseth him. Yet if ỳ lessee sowe the lande and the lessoure after the sowinge, and before that hys graynes be ripe, putteth him out, yet shall the lessee haue hys graynes, and shal haue free egresse and regresse, to repe and cary hys grains for that he wist not at what time hys with this agreeth. An. 37. H. 6. folio. 38.

Cap. 8. hys lessour wolde enter vpon him. Other wise it is if tenaunt for terme of yeares before the ende of his terme soweth the land and the terme is ended, before that hys corn be ripe. In this case the lessour or he in the reuercion shal haue the graines for that the fermour knewe wel the certeintye of hys terme, and when hys terme shuld be ended.

Also if an house be let to a man to holde at will, by force of which the lessee entreth into the house, within whiche house he bringeth his housholde stuffe, and after the lessour putteth him out, yet shall he haue free entre, egresse & regresse in the same house by reasonable tyme to carye his goodes and housholde stuffe.

¶ And if a man seised of an house in fee simple, fee tayle, or for terme of life, the which hath certayne goodes within the same house, and maketh his executours & deceaseth, who so euer after hys death hath the house, yet shall the executoures haue free entre, egresse, & regresse, to cary out of the house, the goods of their testatour by a reasonable time.

Also if a man make a dede of feoffement vnto an other of certayne land, and delyuereth to him the dede but no liuerye of seisin. In this case he to whom the dede is made may enter into the lande, & hold

and

& occupie it at the will of hym that made the dede, for that that it is proued by the wordes of the dede that it is his wil that the other shall haue the lande. But he that made the dede maye put hym oute when he will. Cap.8.

Also if an house be let to holde at wyll the lessee is not holden to susteyne or repayre the house, as tenaunt for terme of yeres is holden to do. But if the lessee at will make voluntary wast as in pulling downe of houses, or in cutting or felling of trees. It is sayde, that the lessour shall haue for that against him an action of trespas. As if I deliuer to a mā my shepe to donge or marle his lād or mine oxē to eare his land, & he fleeth my beastes, I may wel haue an actiō of trespas against him not withstanding the deliuery.

Waste made by tenaunt at will howe he shall be punished. loke An.12 E.4. folio 8. In actiō of trespasse.

Also if the lessour vpon suche lease at wil, reserue vnto him a yerelye rent, he may distraine for the rent behinde, or to haue for that an action of det at his owne choyse. H.6. R.2. in reple.

Tenant by copy of court Role. Cap.ix.

Tenant by copy of court roll, is as if a man be sesed of a manor with in whiche manour there is a custome and hathe bene vsed time oute of

Cap. 5.

minde, that certayne tenauntes wythin the same manet, haue vsed to haue landes or tenementes, to holde to theim, and to their heires in fee simple or in fee taile, or for terme of life. &c. at the will of the lorde, after the custome of the same maner. And such a tenaunt may not alyene the land by dede, for then the lorde maye entre as in a thing forfayte to him. But yf he will aliene his lande to an other, him behoueth after some custome to surrendre the tenementes in some court. &c. into the lordes handes, to the vse of hym that shall haue the estate in suche forme, or to suche effecte.

Forme of surrender i court baron.

¶ Ad hanc curiam venit J. de B. et sursum reddidit in eadē curia vnum messuagium. &c. in manus domini ad vsum E. de B. et heredū suorum vel heredū de corpore suo creātur, vel pro termino vite sue &c. Et sup hoc venit predictus B. de B. et cepit de domino in eadē curia messuagiū predictum. &c. habendum et tenendū sibi et heredibus suis, vel sibi et heredibus de corpore suo creandis vel sibi ad terminum vite sue ad voluntatem domini secundum consuetudinem manerii faciendū et reddendū inde reddditibus debitur seruic. cōsuetudinem inde prius debitur, et de iure consuetur, et dat domino de fine, &c. et fecit domino fidelitatē, &c. That is

is to say B. of E. cometh vnto this court Cap. 97.
& surrendreth in the same court a mese
&c. into the hande of the lord to the vse of Fourme
J of B. and his heires, or to the heyres of plaint.
issuinge of his body, or for terme of lyfe
&c. And vpō that cometh the forsayd J. of
B. & taketh of the lord of the same court
the forsayd mese. &c. to haue and to hold
to him and to his heires, or to him and to
his heires issuinge of his body, or to hym
for terme of life, at the lordes will, after
the custome of the manor, to do and yeld
therfore, rentes, dettes, seruices, & custo-
mes therof before due and accustomed. &c.
and giueth the Lord for a fine. &c. And
maketh vnto the lord his fealtie. &c.

¶ And such tenauntes be called tenantes
by copy of court roll, for that they haue
none other euidence concerninge theyr
tenementes but the copy of the court rols
& such tenantes shall not implede nor be
impleded of their tenemētes by ỳ kinges
writte, but if they will implede other for
their tenementes they shall haue a plaint
made in the court of the lord i such forme
or to such effect J. de B. queritur versus
J de D. de placito terre, videlicet de vno Plaintē.
mesuagio: quadragita acrꝫ terre quatuor
acrꝫ prati. &c. cū pertin. Et facit ptestatio-
nem sequi querelā istā in natura breuis,
dñi regis assise mortꝫ an tecessoris, ad cō-

Cap. 5.

munez legē, vel breuis domini regis assise noue disseisine, ad communem legē. But in natura breuis, de formis donationis in descendre ad communem legem. That is to say D. of B. cōplaineth against C. D. of a plee of lande, that is to saye, of a mese, and. xl. acres of lande. iiii. acres of medowe. &c. with the appurtenaunces, & maketh protestation to sue his plaint in nature of the kynges writte of assise of the death of his antecessour at the common lawe, or by writ of our soueraigne lord the king, of assise of nouell disseisyn at the common law, or in the nature of a writ of Formedone in descende, at the common law, or in nature of some other writ. &c. pleges de pros. F. B.

What remedye a tenaunt of a custome shall haue ageinste his Lord.

And though that som such tenauntes haue inheritaunce after the custome of the Manoure, yet they haue none estate but at the lordes will, after the course of the common lawe. For it is sayde, if the lord put them out, they haue none other remedy, but to sue vnto the lorde by petition. For if they had any other remedye they shulde not be saide tenauntes at the lordes will, after the custome of the maner, but the lorde will not breake the custome that is reasonable in suche cases. But Britāchiese iustice. sayth, that his opinio alwaies hath bene & alwaies shall

be

he if suche a tenaunt by custome paynge his seruices, be put out by the Lorde he shall haue an action of trespas against him, And likewise was the opinion of Danby chiefe Iustice, for he sayth, that the tenaunt by the custome is as wel enherite to haue hys land after the custome as well as he that hath franketenement by the common lawe. Cap. 10. H. 21. E. 4. H. 7. E. 4.

Tenauntes by the yarde. Cap. x.

TEnantes by the yarde, be tenantes in another nature, the tenantes by copy of court Rolls. But the cause for which they be called tenantes by the rodde or yarde, is for that, that when they will surrender their tenementes into the lordes handes, to the vse of another, they shall haue a litel yard or rodde, by the custome and vse, in theyr handes, whyche they shall delyuer vnto the Stewarde or Bayliffe after the custome and vse of the maner. And he that shal haue the lande, shal take the same land in the court, and his taking shalbe entred in the roll. And the stewarde or the Bayliffe accordynge to the custom shall deliuer vnto him that taketh the lande, the same yarde, or another yarde, in the name of seisin. And for this cause they be called tenauntes by the yarde. But they haue none other euidence but copy of the court rolle.

Cap. 10. Surrender made wyout the court.

¶ And also in dyuers lordeshippes, and maners, there is suche custome, if suche a tenant that holdeth by the custome, wyl alien his landes or tenementes, he maye surrender his landes vnto the bailiffe, or to the reue, or to two sad men of the same lordshyp, to the vse of hym that shall haue the lande, to haue in fee simple, fee taile, or for terme of lyfe: &c. and all that shall they presente at the nexte courte. And then he that shall haue the lande by copy of court rolle, shall haue the same lande after the entent of the surrender.

Of customes.

¶ And so it is to witte: ỹ in dyuers lordeshyps and dyuers maners, there be many dyuers customes, in suche case as to take tenementes, and as to pleade, and as touchinge other thinges and customes to be done, and al that, that is not agaynst reason maye wel be admitted and allowed.

Base tenure.

¶ And suche tenauntes that holde after the custome of a seygnorie, or after the custome of a manour, though they haue estate of enheritaunce after the custome of the lordshyp of the maner, yet bycause they haue not any freehold, by the course of the common lawe, they be called tenantes by base tenure.

Diuersity

And dyuers diuersities there be betwene a tenaunt at wyll whiche is in by the lease of the lessoure, by ỹ course of the

common

common law, and tenaunt after the cu- Cap.10.
stome of the manour, in the fourme afore-
said. For tenaũt at will after the custome
may haue estate of enheritaunce (as it is
afore saide) at the lordes will after the cu- Where te-
stome and vsage of the manour. But if a nãt at wil
man haue landes or tenementes, which hath inhe-
be not within such maner or lordeshippe ritaunce &
wher suche custome hath ben vsed in the where not
fourme aforesayde, and will let such lãdes
or tenementes to an other, to haue and to
holde to him and to his heyres at the wyl
of the lessour, these wordes (to the heires
of the lessee) be voide, for this is the cause
if the lessee die, and hys heire entreth, the
lessour shall haue a good action of Tres-
passe against him, but not so against the
heyre of tenant by ỹ custome, &c. for that
the custome of the maner in some case
may helpe hym to barre his lorde in an
action of Trespas.

Also tenant by the custom in some pla-
ces ought to repaire & sustaine ỹ houses,
and the other tenant at wil ought not.
Also one by ỹ custome shal do fealty,
& the other not. And many other
diuersities there be be-
twene them.

Thus endeth the first booke.

HOMAGE.

Cap. 1.

The maner how ỹ tenãt shal make homage,

Omage is the mooste honorable seruice & mooste humble seruice of Reuerence, that a franke tenaunt may doe to his Lorde. For when the tenaunt shall make homage to his Lorde he shall discende & his head vncouered, & his Lorde shall sit, and the tenaũt shal knele before him on bothe his knees, and holde his handes ioyntlye togyther betwene the hãdes of his lorde, and shall saye thus, I become your man from this day forward of life and limme and of earthly worshippe, and vnto you shal be true and faythful, and beare you fayth of the tenementes, that I clayme to hold of you, sauing ỹ faith that I owe vnto our seueraigne lord the kyng. And then the lorde sitting shall kysse hym.

The homage of a religious person.

But yf an abbotte or priour, or any other man of religion shal make homage vnto his lord, he shall not saye, I become your mã. For ỹ he hath professed himselfe onely to be gods mã. But he shal say thus I do you homage, & vnto you shalbe true and faithfull, and beare you faith for the tenementes, that I claym to hold of you

saying

sauynge the fayth that I owe vnto oure soueraigne lorde the kinge. Cap.1.

Also if a womā sole, shall make homage vnto her lorde, she shall not say I become your womā. For ẏ it is not conuenient for a woman to say that she shal become woman to any but onlye to her husband when she is wedded. But she shall saye, I make vnto you homage, & to you shall be true and faithful, and shall beare you faythe of the tenementes that I holde of you, sauynge the faythe that I owe vnto our soueraigne lord the kynge. The homage of a wyfe.

¶ But if a man haue seuerall tenauntes which he holdeth of seuerall lordes that is to say, euery tenācy by homage, then when he maketh homage vnto one of his lordes, he shal saye in the ende of hys homage, sauinge the faith that I owe vnto the kinge, and vnto my other lordes. Homage whē a mā holdeth of dyuers lordes.

¶ And note wel, that none shall make homage, but suche as hath estate in fee simple, or in fee tayle, or his owne ryght, or in another mās right. For it is a groūd in the lawe, that he ẏ hathe estate but for terme of life, shall make no homage, nor take no homage. For if a womā haue lādes or tenemēts in fee siple or in fee taile which she holdeth of her lord by homage and taketh an husband, & hath issue, then the husbād in ẏ life of the wife shal make homage Maxime. What tenāt shal do homage. H.8.E.4. folio.23.

Cap. 1. homage, for that he hath title to haue the lād by the curtesy, if he suruiue his wife and also he holdeth in the ryghte of hys wife. But before issue had betwene them the Homage shalbe made in bothe theyr names. But if the wife decease before homage made by the husband, in the wifes life, and the husband holdeth himselfe in as tenant by ye curtesy, then he shal make no homage vnto his lorde, for that, that he hath as yet none estate, but for terme of life. More shalbe said of homage in the tenure hi Homage auncestrel.

Fealtye. Cap. ii.

Fealtie is as muche to say, as Fidelitas in Latin, and when a franke tenaunt shal make fealtie to hys lord, he shal holde his right hand vpon a boke and shal say thus.

The maner howe fealty shal be made.

Beare you this my lorde, that I vnto you shal be faythfull and true, and beare you fayth of the landes or tenementes, that I clayme to hold of you, and trewly to you shal do the customes, and seruices that I oughte to doe vnto you at termes assygned, as God me helpe and all hys sainctes, and shall kisse the boke. But he shall not knele when he maketh fealtye, nor shal make such humble reuerence as is aforesaid in homage. And great diuersitie there is had betwene makinge of fealtye

altye and homage. For homage maye not be made but to ỹ lorde him selfe. But the stewarde of the lordes courte, or the bayliffe may take fealty of the lorde.

Cap. 2. Diuersitie betwene homage & Fealtye.

¶ Also tenant for terme of life shal make Fealtie, and yet he shall make none Homage, and diuers other diuersities ther is betwene homage and fealty.

¶ Also a man may se a good note. Anno 15. E. 3. where a man an his wyfe made Homage and Fealtie in the cõmon bake whiche is written in such forme. Note ỹ John Leykenor, and Elizabeth his wyfe made Homage vnto William Thorpe in this maner. The one and the other helde toyntlye their handes betwene the handes of William Thorpe and the husband said vnto his wife: we vnto you make Homage, and beare you fayth for the landes that we holde of your conusour whiche hath graunted you our seruices in B. & in L. and the other townes. &c. against al men sauing the faith that wee owe vnto our soueraygne lord the kinge and to hys heyres, & to our other lordes and the one & the other killed hym. And after they made Fealty, and the one and the other held their handes togyther vpon a booke, & the husband said the worde and both kissed the boke. More shalbe said of Fealtye in the tenure of Socage

and

Cap. 3. and in the tenure of franke almoygne, and in the tenure of homage auncestrel.

Escuage. Cap. iii.

ESCuage is called in latin Scuragiū, that is to saye, seruice of shilde. And such a tenaunt that holdeth his lāde by Escuage, holdeth by knightes seruice. And also it is commonly said, that some holde by a fee of knightes seruice, & some by the halfe fee of knightes seruice. &c.

And it is sayd ỳ when the king maketh a vyage royall into Scotland for to subdue the Scottes, than he that holdeth by a fee of knightes seruice, behoueth to be with the kynge by. vi. dayes well and conuenably arayed for the warre. And lykewise he that holdeth his lāde by the halfe of a fee by knyghtes seruice, ought to be with the kinge by xv. dayes. And he that holdeth his land by ỳ fourth part of a fee by knightes seruice, him behoueth to be with the kyng by ten daies. And so after the quātity he ỳ hathe more, to doe more and he that hath lesse to doe lesse.

Ex. 7. E. 3 But it appeareth by the plees & argumentes, made in a good plee vpō a writ of Detinue of an obligacion brought by one Henry Gray, ỳ it nedeth not to hym that holdeth by escuage to goe hym selfe with the king, if he will find an able person for hym conuenably arayed for the war

For what cause he ỳ

to

to go with the kynge, & that ſemeth good reaſon. For it maye be, that he that holdeth by ſuch ſeruices is ſicke, in ſuch wiſe that he may not go nor ride.

Capitu. 7. holdeth by Eſcuage may finde a man to do ſeruices for him.

¶ And alſo an abbot or any other man of religion, or a women ſole that holdeth by ſuch ſeruices, ought not in ſuche caſe to go in proper perſon. And ſyr William Perle that time chicke iuſtice of the common plate, ſayd in the ſaid plee, that eſcuage ſhall not be graunted, but where the kinge him ſelfe goeth in proper perſon. And ſo it abode in iudgement in the ſame plee, if theſe forty dayes ſhalbe accomted frō the day of the muſter of the kinges hoſte made by the comens, & by the kinges cōmaundement, or els from the daye that the king firſt entreth into Scotlande. &c. therefore inquere therof.

How the forti daies ſhalbe accompted.

And after ſuch viage royall into Scotlande, it is commonly ſaid, that the auctorite of parliament, the eſcuage ſhalbe ſet and put in certayne, that is for to ſay a certaine ſum of mony, how much euery that holdeth by a hoole fee, of knyghtes ſeruice, whiche was not in his owne proper perſon, nor none other for him wt the king, ſhal pay vnto his lord of whom he holdeth his land by Eſcuage. As it was ordeyned by auctorite of Parliament that euerye one that holdeth by a

hole

Cap. 3.

hole fee by knightes seruice, which was not with the kinge shal paye to his lorde xl.s. Then he that holdeth by the halfe of a fee by knightes seruice, shall pay to his lord but.xx.s. And he that holdeth by the iiii. part of a fee by knightes seruice shall pay but.x.s. And so who more, more, and who lesse, lesse. And some tenauntes hold by the custome, that if Escuage renewe by auctoritie of parliament, to any sum of money, ỹ they shall pay but the halfe, of that summe: and some hold that they shall pay but the fourth part of that sum But because the Escuage, that he shall pay is not certaine what the parliament will assese the Escuage, he holdeth by knightes seruice. But otherwise it is of Escuage certaine, of which shalbe spoken in the tenure of socage.

Diuersity of escuage

The commō spethe of escuage Maxime.

And if a man speke generally of Escuage, it shalbe vnderstand by the commō spethe of Escuage, not certain, whiche is knightes seruice. And suche escuage draweth vnto him homage, & Homage groweth vnto him Fealty, for Fealty is incident to euery maner of seruice, except to the tenure of Franke almoigne, as it shall be sayde hereafter, in the tenure of franke almoigne. And so he that holdeth by Domage, and escuage, holdeth by homage, Fealtie and Escuage.

And

¶ And it is to be vnderstand, that when escuage is so seased by auctozitiy of parliament, euery lozd, of whom the lande is holden by escuage, shall haue the escuage is assessed by the parliament, bicause it is vnderstād by the law, that at ꝑ beginning such tenementes were giuen by the lozdes to the tenauntes, to hold by suche seruices, to defende their lozdes, as wel as the kinge, and to set in quiet and rest their lozdes and the kinge, of ꝑ Scottes afozesayd. And foz that such tenementes came first of the lozdes, it is reason that they haue the escuage of their tenauntes. Cap. 5.

¶ And the lozdes in such case maye distreine foz the escuage so assessed, oz they may haue the kinges writs direct vnto the sheryffes of the shires, to leuy suche escuage foz them, as it appereth by the Register. Fo. 88. Distres foz Escuage.

¶ But of suche tenauntes that holde of the kinge by escuage whyche were not with the kinge in Scotlande, the kynge himselfe shall haue the Escuage.

Item in such case afozesayd where the king maketh a viage ryal into Scotlād, and the escuage is assessed by the parliament, if the lozd distreine his tenant that holdeth of hī by seruice of an hole knightes fee foz the escuage so assessed, &c. And the tenant pleadeth and will auerre that he

Cap. 3. he was with the kinge at Scotlande. &c. by .xl. dayes, and the lorde will auerre the contrary it is sayd, that it shal be tryed by the certification of the Constable of the kinges hoostе in writinge vnder hys seale, which shall be sent to the iustices.

Tryal.

Homage, fealtye, and Escuage.

Cap. 3.

Warde. TEnure by Homage, Fealty, and Escuage, is to holde by knyghtes seruice, and it draweth vnto hym warde marryage, and Reliefe. For whe such a tenaunt dieth, and his heire male being within the age of .xxi. yere. ỳ lorde shall haue the land holden of him vntyll the age of the heire of .xxi. yeare, whiche is called playne or full age, for that suche an heire by the vnderstanding of the law is not able to do knightes seruice before the age of .xxi. yere.

The full age of a woman. An. 37. H. 6. folio. 32 And also if such an heire be not maried at the time of the death of his auncestor, then the lorde shall haue the warde, and mariage of him. But if such a tenaunt dye, his heire female beinge of the age of .xiiii. yere or more, then the lorde shall not haue the warde, neyther the lande, nor of the bodye. For that a woman of such age may haue a husband able to do knightes seruice. But if suche an heyre female be within the age of .xiiii. yeare,

and

and not maried at the time of the death of her auncester, then the lord shall haue the ward of the lande holden of hym, till the age of suche an heire female of. xvi. yere. For that it is geuen by the statute of Westminster the first. Ca. 22. that by two yeare next folowing the sayd. xiiii. yere, the lorde maye tender a conuenient mariage, without desperaginge of suche an heire female. And if the lorde do not tender her suche mariage within the said ii. yere, then she at the end of the sayd. ii. yere may enter and put out ẏ lord. But if suche an heir female be maried within the age of. xiiii. yere in the life of her ancester: and her auncester dye, she beinge within the age of. xiiii. yere, then the lord shal haue but the ward of the lande, tyl the ende of. xiiii. yeres of age of suche an heyre female, and then her husband and she may enter into the land, and put out the lorde, for this is out of the case of the statute. In so much that the lord can not tender mariage to her that is maried. &c. For before the said estatute of westminster the first, such issue female that was with in the age of. xiiii. yere at ẏ tyme of the death of her aũcester, & after that she had accõplished the age of. xiiii. yere without any tẽder of mariage to her by ẏ lord such an heire female thẽ might enter ĩto

Cap. 4.

Cap. 5.

the land and put out the lorde, as it appereth by the rehersal, and by the wordes of the same estatute, so that the saide statute of westminster ỳ first was made in suche case al for the aduãtage of the lords, as it semeth. But yet at all tymes it is vnderstand by the wordes of the same estatute that the lord shal not haue the two yeres after the xiiii. yeare as it is aforesayde.

The full age of discretion.

And note wel, that the full age of heire male and female, after the cõmon speche is sayde the age of. xxi. And the age of discretion is said the age of xiiii. yeare for a chyld at such age, which is wedded with in such age to a woman, may agre to the mariage or disagree.

The lorde shall haue but ones ỳ mariage of his ward.

And if the wardein in chiualrie mary ones his warde wỳn the age of xiii. yeare to a wyfe, & after if he at the age of xiiii. yere disagreeth to ỳ mariage it is said by some ỳ the child is not holden by the law to be maried an other tyme by his wardeyn, for that the wardeyne had once the mariage of him, and therfore he was out of his warde, as concerning the ward of his body. And when he had ones the mariage of him, & ones was out of his warde, he shal haue no more ỳ mariage of hym. In ỳ same maner it is if ỳ wardein mary him, and the wife die, the childe beyng within age of xiiii. yeare or. xxi. yeares.

And

¶ And that suche childe may disagree to such mariage, when he cometh to the age of xiiii. yere, it is proued by ỳ wordes of the statute of merton. Ca. 6. that sayeth thus. De dominis q̄ maritauerint illos quos habent in custodia sua vilanis, vel aliis sicut burgēcibus, vbi disperagētur, si talis heres fuerit infra xiiii. annos & talis etatis q̄ matrimonio cōsentire nō possūt tūc si parentes illius cōquerātur, dūs amittat custodiam illā vsq; ad etatem heredis. Et omne commodū q̄ inde receptū fuerit cōuertatur ad cōmodū heredis infra etatē existentis secundū dispositionē parentū propter dedecus et factū. Si autem fuerit xiiii. annorum et vltra, quod consentire poterit, et tali maritagio cōsenserit nulla sequatur pena. And so it is proued by the same statute, ỳ no desperage shalbe, but where he that hath the warde, marieth him within the age of xiiii. yere. Cap. 4.

Also it hath been a question howe these wordes should be vnderstand. Si parentes conquerantur. &c. And it semeth vnto some whiche considering the Statute of Magna carta. Capit. vi. that willeth that heredes maritentur absque disperagatione. &c. vppon the whiche this sayde statute of Merton, vppon this poynte is grounded as it seameth, and in so much that it was neuer sene nor heard Question

Cap. 5.

that any action was brought vpō the sta-
tute of Merton, for suche desperaginge
against the wardein for the cause afore-
said. And if any action may be taken vpō
such matter, it should be taken by cōmon
presumption before this time, or at some
time to be put in vre. And note that these
wordes shalbe vnderstand in such maner
Si parentes conquerantur. i. si parentes
inter se lamentantur: which is as much
to say, that if the cousins of such a childe
haue cause to make lamentacion, or cō-
plaint among thē, for the shame done to
their cousin so desperaged, which in ma-
ner is a shame to them all, then may the
next cousin, to whom the heritage maye
not discend, enter & put out the warden
in chiualrie. And if he will not, an other
cousin of the childes may do it, and he to
take the issues and profites of the childe
& of that yelde the childe accompt when
he cometh to full age. Or els the childe
within age may enter him selfe, and put
out the warden. &c. Sed quere de hoc.

The expo-
sition of
these wor-
des.

Si paren-
tes con-
querātur.

Inuere.

Diuers
-disperag-
inges.

¶ Also there be many other diuers dis-
peraginges, whithe be not specified i the
same estatute. As if the heire ꝑ is i ward
be marted vnto one ꝑ hath but one foote
or one hād, or is deformed or lame, or ha-
uing an horrible disease, or els a great &
continual infirmity, or if ꝑ heire male be

marted

maryed to a woman that is paste chylde bearynge. And many other causes of disperaginge ther be, but enquyre of them, for it is good matter to learne.

Cap. 4. Inquere.

And of heires males that be w̄ in age of. xxi. yeare after the death of these aūcesters vnmaried. In such case ẏ lorde shall haue the mariage of such an heire, & haue space and time to tender to hym couenable mariage, without disperaging within the same tyme of. xxi. yeres.

If that ẏ warde refuse ẏ mariage he shall pay.

And it is to wit, that the heire in suche case may chose if he wil be maried or not But if the lord, which is called wardeyn in chiualry, tender a couenable mariage to such an heire, w̄ in the age of. xx. yeare without disparaginge, and the heire refuse it, and wil not be maried within the same age, then the sayde wardeyne shall haue the value of the mariage of suche an heyre. But if such an heire male marrye hym selfe within the age of. xxi. yeare against the wil of the wardein in chyualrye. Then shall the wardein haue double the value of the mariage by force of the estatute of Merton aforesaide as in the same statute is more fully comprised.

Also dyuers tenauntes holde of theyr Lordes by knyghtes seruyce, and yet they hold not by escuage, nor pay no Escuage as they that holde their landes by

Cap. 5.

Castelwarde.

castelward, that is to say to kepe a towre of a castel or a gate, or some other place of the castle by reasonable warnyng, when their lordes herd tell, that enemies wyll come or be come into England.

Maryme.

¶ And in many other cases a man maye hold by knightes seruice, and yet he holdeth not by estuage nor paieth no estuage as shalbe said in ỳ tenure of grãd sergãt. But in all cases where a man holdeth by knightes seruices, such seruices draweth vnto the lorde, ward, and mariage.

Relefe.

And if a tenant that holdeth by seruice of an hole knyghtes fee, die, his heyre being at full age of xxi. yeare, then the lorde shall haue. C. s. for a relefe. And of ỳ heyre of him that holdeth by half a knightes fee l. s. And of him that holdeth by a quarter of a knightes fee. xxv. s. And he that hath more, more, and he that hath lesse, lesse.

Also if a man may hold his land of his lorde by the seruice of two knyghtes fees and then the heire being of full age at the time of the death of his auncester, shall paye to his lorde. x. li. for relefe.

The father liuyng, the sonne shal not be vnder gouernaūce of any other.

Also if there be grandfather, mother, and son and the mother dieth, the father and the son liuing, and after the grandfather, wiche helde his lande by knightes seruice, dieth seised, and the land discendeth to the son of the mother, as heyre to

the

the grādfather, which is within age. In such case the lord shall haue the warde of the lande, but not the warde of the body of the heire. For that none shalbe in ward of his body to any lord, his father lyuinge because the father during his life shal haue the mariage of his heyre apparāt, and not the lord. Other wyse it is if the father be dead, the mother lyuinge, where the lande holden in chyualrye discendeth to the sonne on the fathers syde. &c. Cap.4.

Also if a man be seysed of lande, which is holden by knyghtes seruyce, and maketh feoffement in fee to his vse, and dyeth seased to the vse of his heyre within age, and no wylle by hym declared, the lorde shall haue a writte of ryghte, of the warde of the body, and of the lande, as if the tenant had died seised of the demesne. And if the heire be of ful age at the deathe of his auncestor, in such case he shall paye relefe, like as if he had bene seased of the demesne, and that is by the statute of An. 4. H. vii. Cap. xvii. Gardeyne by reason of vse.

Also there is wardeyne in ryghte chyualry, and wardeyn in dede in chyualry. Wardeyn in ryght chyualry, is wher the lord because of his lordshyp is seised of the warde of the land, and the heyre by supra warden in deede in chyualrye is, where the Lorde in suche case after his seysyng Diuision. Gardeyne ryght.

Cap.5. Gardeyn in dede.

graunteth by dede, or without dede, the warde of the lande, or of the heyre, or of both to another man, by force of whiche graute the graūtee is in possession, then is the graūtee called wardein in dede.&c.

Tenure in Socage. Cap.6.

THenure in socage, is wher ỹ tenant holdeth of his lord his lande by certaine seruice, for al maner of seruices, so that the seruyce be not knyghtes seruice. As wher a mā holdeth his lande of his lord by fealtie & certeinrent, for all maner of seruices, or els wher a mā holdeth his land by homage, fealtie, & certain rent for al maner of seruices: for homage by himselfe maketh not knightes seruice.

Also a man may hold of his lord onlye by fealtye, and suche tenure, is tenure in Socage, for euery tenure that is not tenure in chyualry, is tenure in socage.

* What is tenure in socage.

And it is sayde that the cause whereof such tenure is sayde, & hath the name of tenure in socage, is thus. Quia hoc socagium, idem est quod seruicium soce, hec soca soce, idem est quod curua. S. one soke or one plow lande. And in olde time before the limitation of tyme of mynde great part of theyr tenantes, that held of theyr lordes by socage ought to come wᵗ theyr plowes euery of the sayd tenantes by certaine dayes in the yere to eare and sowe

sowe the lordes landes of his own grayn- Cap. 5.
nes. But for that such workes were done for the liuelode and sustinaunce of theyr lordes, they were acquited against theyr lordes of al maner of seruices.

And for this that suche seruices were doone with theyr plowes, suche tenure was called tenure in socage. And after ý suche seruices were changed in diuers other maner seruices, by consent of the tenantes, and by the desyre of theyr lordes that is to saye, into a yerely rent. &c. But yet the name of socage abideth, and in diuers places thole tenãtes yet do suche seruice with their plowes vnto their lordes so ý al maner of tenures ý be not tenures by knight seruice, be cald tenurs i socage.

Also if a man hold of his lorde by escua- A rule.
age certeine, that is to say in such forme that when escuage renneth, and is assessed by the parlyament to a more summe or to a lesse summe, then the tenant shall pay to his lorde but halfe a marke for escuage, and neyther more ne lesse to how great summe, or litle summe, that the escuage runneth, in this case bycause the summe ý he shal pay for the escuage is in certayne before that any escuage is assessed. &c. such tenure is tenure in Socage. And not by knightes seruice. But where the summe that the tenaunte shall paye

for

Cap. 5.

for escuage is not certaine, that is to saye where it may be, that the summe that the tenant shall paye to his lord for escuage, may be at one tyme more, and at another tyme lesse, after that it is assessed &c. then such tenure is tenure by knightes seruice.

In other difference.

Also if a man holde his lande for to pay certayne rent to his lord for castel ward, suche tenure is tenure of socage. But where the tenaunt ought by hym selfe, or by an other to make castell warde, suche tenure is tenure by knyghtes seruice.

Maxime. Rent seruice.

Also in all cases where the tenant holdeth of his lorde, to paye to hym any certayne rent, that rent is called rent seruice

The nerest frende.

Also in suche tenure in Socage, if the tenant haue issue, and die, his issue being within the age of. 14. yere, then the nerte frende of the heyre, to whome the heritage may not descend, shal haue the ward of the land and of the heyre, vnto the age of the heyre of. xiiii. yeres, and suche wardein is called wardeine in socage. For if lande descende to the heyre by the fathers syde, then the mother, or some other nigh cousin of the mothers syde, shall haue the ward. And if land descend to the heire by the mother syde, then the father or the nerte frende of the fathers syde shal haue the warde of such landes or tenementes. And when the heyre commeth to the age

of

of.xiiii.yere complete, he may enter and put out his wardein in ſocage, and occupie the lande hym ſelfe if he wyll. Cap.f.

And ſuch wardein in ſocage ſhall take no iſſues or profites of ſuche landes or tenementes to his owne vſe, but onely to ỹ vſe and profit of the heyre, and of that he ſhal yelde accompte to the heire, when it pleaſeth the heyre, after that the heyre hath accomplyſhed the age of.xiiii.yeres. But ſuch a wardein vpon ſuch accompt, ſhall haue allowance of al his reaſonable coſtes & expences of all thing, as of meat drynke and other neceſſaries. &c. The gouernour ſhall geue accõt to ỹ heire.

And if ſuch a wardein marry the heyre within age of.xiiii.yere, he ſhal make accompte to the heyre, or to his executours of the value of the mariage, thoughe he toke nothing for the value of the mariage for ỹ it ſhalbe arrected his owne folye, that he would mary hym without takyng the value of the meryage, without he mary hym to ſuche a mariage ỹ is worthy in value, as muche as ỹ mariage of the heir. &c.

Alſo if any other mã that is not a nigh frende. &c. occupie the landes & tenements of the heyre, as wardeyne in ſocage he ſhalbe compelled to yelde accompte vnto the heyre, as well as his nerte frende. An other gouernor.

For it is no plee for hym in a wrytte of accompte to ſaye, that he is not hys nyghe

Cap. 5.

nighe frend. ꝛc. But he shall answer whether he occupieth the landes or tenementes, as wardeyn in socage or not.

Inquere.

But inquire yf after that the heyre haue complished the age of. xiiii. peare, and the wardein in socage continually occupieth the lande till the heyre cometh to ful age of. xxi. yere, yf the heyre at hys ful age haue none action of accompte against the wardeyne of the time that he hath occupied after the sayde. xiiii. yeres against him, as against his wardein in Socage or agaynst hym, as against hys baylife.

If the wardein in chiualrye make hys executors, and die the heire being within age. ꝛc. the executours shall haue the warde during the nonage. But yf the wardein in socage make executours and dye, the heyre beinge within age of. xiiii yeres, his executours shall not haue the warde, but another nigh frend to whom the heritage maye not discend, shall haue the warde.

A notable difference. If ỹ wardein in socage die before anye accompte made the heyre is.

And the cause of diuersitye is, for that the wardein in chiualry hath the ward to his proper vse, and the wardein in socage hath not the warde to his owne vse but to the vse of the heyre.

And in suche case wher the wardeyne in socage dieth before any suche accompte made

made by hym to the heire, the heire is of that without remedy, for that no writte of accompt lieth against the executours but onely of the kinge.

Cap. 52 Without remedy. The prerogatiue of the kyng.

Also the lorde of whom the lande is holden in socage after the death of his tenaunt shall haue relefe in such fourme. If the tenaunt hold by fealty & certayne rent to pay yerely. &c. If ỳ terme of payment be to pay by.ii. termes of ỳ yere, or by.4. termes of ỳ yere ỳ lorde shall haue of the heire of his tenãt as muche as the rent amounteth ỳ he should pay by yere. As if the tenant hold of his lorde by fealtye, and.x.s. rente, payable at certayne termes of the yeare, then the heyre shall pay to the lord. x.s. for relefe, aboue this x.s. that he shall pay for the rent.

Relefe in tenure of socage.

In like maner is if a man be seased of certaine lande, that is holden in socage and maketh a feoffement in fe to his vse and dieth seised of the vse (his heires beinge of the age of.xiiii. yeres or more and no will by him declared, the lorde shall haue relefe of the heire as is aforesayde and this is by the sta. of an.19.H.7.ca.15.

And in suche case after the death of the tenaũt such relief is due to the lord incõtinẽt, of what age so euer the heire be, so ỳ he passe the age of.xiiii. yeres, for ỳ suche a lorde maye not haue ỳ ward of the body nor

Cap. 5.

nor of the lande of the heyre. And the lord in such case ought not to abide ỳ paymẽt of his relefe after the termes & dayes of payment of the rẽt, but he ought to haue his relefe incontinent. And therefore he maye incontinent, distreyne after the death of his tenant for the relefe.

In the same maner it is, where a tenãt holdeth of his lord by fealty, & by a pound of cummin, or by a pound of peper, beside the common rent, and the tenant die, the lord shall haue for his relefe, a pound of cummin, or a pound of pepper.

When an the lande shal distreine incontinẽt and when he ought to tary.

In the same maner it is where the tenaunt holdeth to paye by yeare a certayn numbre of capons or hennes, or a payre of gloues or certaine bushels of wheate, and suche other manner thynge. But in some case the lorde ought to abyde to distreyne for his relefe till a certain tyme.

As if the temaunt holde of his lord by a rose, or by a bushel of roses, to paye at the feast of saint John Baptist, if suche a tenant die in wynter, the the lord may not streyne for his relefe &c. vntill the tyme ỳ the roses by the course of the yeare maye haue their growyngs. &c. et sic de simi.

Also if any peraduenture wil aske why a man mat not holde of his lord by fealty onely for all maner of seruices, so muche that when the tenãt shall make his feal-

tie

tie he shal swere to his lorde, that he shal do to his lord al maner of seruices due & when he hath made fealty in suche case there is no ne other seruice due. To this it may be sayd, that were the tenant holdeth his lād of his lorde, it behoueth that he ought to do to his lord some maner of seruice, for if the tenant nor his heyres ought to doo no maner of seruice to his lord nor to his heires, then by longe time cōtinued, it shuld be out of mind & remēbrance of whom the land was holden, of the lorde, or his heire or not, & then more ofter & more soner will men say that the land is not holden of the lord, nor of his heires thē other wise, & vpon this the lord shal lose his eschete of the land, or percase the forfaiture or profite ỳ he might haue of the lands. So it is reason that the lord & his heires haue some seruice done vnto them for a proue & a witnesse, that the lād is holden of them, & for that fealtie is incident to all maner of tenures except tenure of franke almoign, as it shal be said in franke almoign. And bicause that the lord will not at the beginnyng of the tenure haue any other seruices but fealtie, it is reason that a man may holde of his lord onely by fealty, & whē he hath made his fealtie, he hath done al his seruices.

Cap. 10.

Aunswere

Wherfore saut is geuen.

A rule.

Also if a mā let to an other for terme of

lyfe

Cap. 5. like certaine landes or tenementes with out speaking of any rent to yelde to hym yet he shal do to the lessour fealtie for that he holdeth of hym. Also if a lese be made to a man for terme of yeares it is sayde the lessee shall do the lessour fealtie, for that he holdeth of hym, and this is proued wel by the wordes in a wryte of waste, when the lessour had caused to bring a writte of waste against hym, the which wrytte said that the lessee holdeth the tenementes of the lessour for terme of yeres, so the writ proueth a tenure betwene the &c. But he that is tenaunt at will after the course of the common lawe, shall not make fealtie because he hath no maner of sure estate. But otherwyse it is of tenãt at wil after the custome of the manor because ỳ he is bounde to do fealtie to his lorde for two causes, one is because of custome, the other is because he taketh his estate in such forme to do to his lord fealty.

The form of a wryte of waste.

Franke almoigne. Cap. vi.

TEnure in frãkalmoigne, is where an abbotte or a Prior, or an other man of religion, or of holy churche holdeth of his lorde in franke almoigne, that is to saye in Latine. In liberam elemosinam, that is to say, in free almes.

The beginning of the

And such tenure began first in olde tyme in such forme, when a mã in old time was

setted

seised of landes or tenementes in his demesne as of fee, and of the same landes or tenementes enfeoffed an Abbot and his couent, or a Priour & his couent, to haue and to hold to the & their successours for euer, in pure and perpetuall almes, or in franke almoigne. In these two cases the landes were holden in franke almoigne, or by such wordes to holde, of the grauntour or of the feoffour, and his heires in free almesse, in these two cases, the tenementes were holden in frãke almoigne. And in the same maner it is, where the lands or tenements were graunted in old time to a deane & chapiter, and to their successours, or to a person of a Churche & to his successours, or to any other man of holy church, and to his successours in free almesse, if he had capacitie to take suche grauntes or feoffementes. &c.

Cap. 6. First gifte in free almesse.

And suche as holde in free almesse, bee bound of right before God, to do orisons, prayers, masses, & other deuine seruice, for the soules of their grauntours or feoffours, or for the soules of their heyres whiche be dead, and for the prosperitie and good lyfe, and good healthe of theyr heyres that be alyue.

And for this they do at no tyme no maner of fealtye vnto their lordes, for that suche deuine seruice is better for theym

Cap. 6. Tenāt in fre almes shal do no homage.

belore god, then anye doynge of fealtye, and also that these wordes, free almesse, or franke almoigne exclude the lorde to haue anye worldly or temporall seruyce, but onely to haue deuine and spirituall seruice to be done for him. &c.

And if suche that holde their tenementes in free almes, or in franke almoigne will not, or sayle to doe suche deuine seruice, as it is sayd, the lorde maye not bystreyne them for the seruice vndone. &c. bycause it is not sette in certayne, what seruices they ought to doe, but the Lorde maye of that complayne to theyr ordinarie, prayeng him that he will set punishment and correction of that.

And also to prouide and see, that suche negligence be no more done, and the ordinary of right ought to do that.

Tenaunt by diuine seruice.

But where an abbot or a priour holdeth of hys lorde by certayne deuine seruice in certaine to be done, as for to singe a masse euery friday in the weke, for the soules. &c. or euery yere at suche a daye to singe Placebo and Dirige. &c. or to destribute in almes to an hundred poore men an hundred pence at such a daye, in suche case yf suche deuine seruice be not done, the lorde may distreyne. &c. for that thys diuine seruice is in certayne by theyr tenure

tenure, what the abbotte or the priour ought to do. And in suche case the lord shal haue the fealtie, &c. as it seemeth. Cap.6.

And suche tenure is not sayd tenure in free almesse, but it is sayde tenure by diuine seruice, for in tenure is free almes or franke almoigne, no mencion is made of any maner certaine seruice. For none may holde in free almesse or franke almoigne, if there be expressed any maner of certayne seruice that he ought to do.

Also if it be demaunded whether the tenant in franke marlage shall do fealtie to the donour, or to his heires before the fourth degree be passed, &c. ye may aunswere and say ye, for he is not like as to this entent to a tenant in free almes, or franke almoygne, for that the tenant in free almes shall doo because of his tenure diuine seruice for his lorde, as it is afore sayde, and that he is charged to do by the law of holy church, and for that he is excused & discharged of fealtie. But tenant in frank marlage doth not for his tenure such seruice. And if he do not to his lorde fealtie, then he doeth not to his lorde any maner of seruice nether spiritual ne temporal, which should be an inconuentence and against reason ỳ a man should haue estate of inheritaunce of an other, and yet the lord shall haue no maner of seruice of

Question

Inanswer

Cap. 6. and so it semeth, that he shall do sealtie to his lord, before the fourth degree be past &c. And when he hath doone sealtie, he hath done all his seruices.

And if an Abbot holde of his lord in fre almesse, and the Abbot and his couent vnder their common seale, alyene the same lande to a seculer man in fee symple, in this case the seculer man shall doe sealtie to the lorde, for that he may not holde of his lorde in free almesse, for if the lorde ought not to haue of hym sealty, then he shall haue of hym no maner of seruice, which should be an inconuenience, wher he is lord, & the tenements holden of him.

Also if a man graunt at this day to an abbot or to a priour, lādes or tenementes in fre almesse or franke almoigne, these wordes fre almesse or franke almoigne be voyde, for that it is ordeyned by the statute, whiche is called. Quia emptores terrarum, which statute was made. An. 18. E. primi, that no man may aliene or graunt landes or tenementes in fee symple to holde of hym selfe: so that if a man seysed of certayne landes or tenementes, which he holdeth of his lord by knyghtes seruice, and at this daye he graunteth by lycence the same lande to an abbot. &c. in fre almes or franke almoigne, the Abbot shal hold immediatly the same tenemēts.

Westmin ster the. 4.

by

by knyghtes seruice of the same lorde, of whome his grauntour helde, and shal not holde of his grauntour, because of the same estatute, so that no man may holde in free almes or in franke almoigne, but if it be by title of prescription, or by force of a graunt made to some of his predecessours, before the same statute was made. Cap. 6.

But the kyng may geue landes or tenementes in fee simple, to holde in free almes or franke almoigne, or by other seruices, for he is out of ỹ case of the statute. 19.12 E.4. in assis.

And note well, that no man may holde landes or tenementes in free almes, but of the grauntour or his heyres, and that for the priuitie of the gift, and therfore it is sayde, that if there be lord, mesne, and tenant, and the tenaunt is an abbot, that holdeth of his mesne in franke almoigne if the mesne die without heire, thẽ ỹ mesnalty shal come by eschete to ỹ sayd lordes aboue, and the abbot then shall holde of him immediatly only by fealtie, and shal do him fealtie, for that he may not holde of hym in franke almoigne. &c. The hinge is aboue his lawe.

And note wel, where that such a man of religion holdeth his landes of his lorde in fre almes. &c. his lord is bounde by the law to acquite him of euery maner of seruice, ỹ any lord aboue him, wil demaund or aske of the same tenements. And if he

Cap. 7. A writ of mesne.

acquite him not, but suffereth him to be distreined, &c. then he shall haue against his lord a writ of mesne, & recouer against him his damages and costes of his sute.

Homage auncestrel. Ca. vii.

TEnure by homage auncestrell, is where a tenant holdeth his land of his lorde by homage, and the same tenant and his auncester, whose heire he is, haue holde the same lande of the sayd lorde, and of his auncesters, whose heire he is, from time out of mind, by homage & haue done homage vnto him. And this is called homage auncestrell, because of the continuance which hath bene by title of prescription in the tenancy, in ẏ bloud of the tenaunt, and also in the lordeship, in the bloud of the lorde.

Warrãti. And such seruice of homage auncestrel draweth to him warranty, ẏ is to say, if the lord ẏ is aliue hath receiued ẏ homage of such a tenant, he ought to warrant his tenant, when he is impleded of the lãdes holden of him by homage auncestrel.

Sequitãce. And also such seruice by homage auncestrel draweth to him acquitãce, ẏ is to say, that the lorde ought to acquit his tenant agaynst all other lordes aboue him of euery maner of seruice.

When the lorde is bounde to

And it is said, that if such tenant be impleded by a precipe q̃ reddat. &c. And he voucheth his lorde to warranty whiche

commeth in by proceſſe, and aſketh of the tenant what he hath to bind him to warrantie, and he ſheweth how he & his auncestors, whoſe heire he is, haue holde the lande of the vouche and of his auncestors whoſe heyre he is, by homage fro tyme out of minde, if the lord which is vouched hath receiued none homage of the tenant nor of any of his ancestors, the lord then if he wil may diſclaime in the lordſhyp & ſo put out the tenaunt of his warrantie. But if the lorde, whiche is vouched, hath receiued homage of the tenāt, or of any of his ancestors, then may he not diſclaime but he is boūd by the lawe to warrāt the tenant, & then if ẏ tenant leeſe the land in defaute of the vouche, he ſhall recouer in value againſt the vouche of the landes or tenementes, that the vouche had at the tyme of the vouche, or any tyme after.

Cap. 7. Warātie.

Diſclame

Recouerie in value.

And it is to wete, ẏ in euery caſe where the lorde maye diſclayme in his lordſhip by the law in court of record, and of the will diſclayme, his ſeignory is extincte, and the tenant ſhal hold of the lord nexte aboue the lorde, whiche ſo diſclaymeth.

A rule.

But if an abbot or a pryour be vouched, by force of homage auncestrel. &c. though he hath neuer takē homage. &c. yet he can not diſclaime in this caſe, nor in none other caſe, for thei cānot deueſt ẏ thyng in

Cap. 7. fee, which hath ben vested in their house.

Also if a man that holdeth his lande by homage auncestrel, alieneth hys land to another in fee, the aliene shal do homage to his lord. But he holdeth not for ȳ lord by homage ancestrel, for that the tenancy was not continued in the bloud of ȳ auncestors of the aliene, nor the aliene shall neuer haue the warrantie of his land, of his lorde, for that the continuance of the tenaunte in the tenaunt and in his bloud by the alienation is discontinued, and so se, that the tenaunt that holdeth his land by homage auncestrel of his lord, if such a tenaunt alieneth in fee, though that he take estate of the aliene agayne in fee, he holdeth the lande by homage, but not by homage auncestrel.

P 10. E. 4

A mã shal make homage but ones in his lyfe.

Also it is sayde, ȳ if a man hold his lãd of his lorde by homage and fealty, and he hath made homage & fealtie vnto his lord and the lord hath issue a son and dieth, & the lordshippe discendeth to his sonne: In this case the tenaunt, which did homage to the father, shall not doe homage to the sonne, for that when a tenaunte hath made ones homage to his lorde, he is excused for terme of his lyfe, to make homage to any other heire of the lorde. But yet he shall doe fealtie to the sonne and heire of his lorde, thoughe that he made

fealtie

fealtie to his father. Cap.7.

Also if the Lorde after the homage to him made by his tenant, graunt the seruice of his tenants by dede vnto another in fee, and the tenant attourneth. &c. the tenant shal not be cõpelled to do homage but he shall do fealtie, thoughe he dyd fealtie before to the grauntoure, for fealtie is incident to euery attornement of tenementes, when the lordshyp is graunted. But if a man be seised of a manour, and another man holdeth his lande of him as of the manour afore sayd by homage, the whiche hathe done homage to his Lorde whiche is seased of the manoure, if after that a straunger bryngeth a Precipe quod reddat, agaynst the lorde of the manour and recouereth the manour agaynst him sheweth execution. &c. In this case the tenaunt shall ones agayne do homage to him, that recouereth the manoure, all be it he hathe once done homage before, for that the state of hym, whiche receyued the firste homage, is deseted by the recouerye. And it shall not lye in the mouthe of the tenaunte to falsyfye or desete the recouerye, whiche was againste his lorde, and to see the diuersitie in this case, where a man commeth to his lordshyppe by recouerye, and where he commeth by discent or graũt of the seignorie

A rule whē a mā shal make twise ho-mage.

Diuersity

Cap. 7. When the tenāt shall not be distrained when he doth no homage.

Also if a tenant, whiche ought by his tenure to do homage to his lord, come to his lord, and say to hym, sir I owe to doe vnto you homage for the tenementes, that I holde of you, & I am redye here to do you homage, for the same tenementes for the whyche I praye you that ye will now receiue it of me, and if the lord then refuse to receyue it, then after suche refuse the lord may not distreine the tenāt for the homage vndone, before that the lord require the tenaunt to do to him homage, and the tenaunt refuse to do it.

Also a man may hold his lande by homage auncestrel, & by escuage, or by other knightes seruise, as wel as he myght hold his lande by homage auncestrel in socage.

¶ Graund sergeantie. Cap. viii.

TEnure by graunde sergeantie, is where a man holdeth his landes and tenementes of our souraigne lorde the kynge, by the seruyce whiche he ought to doe in his owne proper person, as to beare the kynges banner, or hys speare, or to leade his hoaste, or to be hys marshall, or to beare hys sworde before him at his coronacion, or to be his sewer at his coronatiō, or his carver, or his butler, or to be one of his chamberlaynes of his receite of his eschequer, or to to doe other suche seruice. &c. and the cause wherefore

fore suche seruice is called great seriantie is for that it is more honourable & worshipfull and digne, then is the seruice of the tenure by escuage, for he that holdeth by eschuage is not limitted by his tenure to do any more speciall seruice, then any other that holdeth by Escuage ought to doo. But he that holdeth by graunde seriantie, ought to do a speciall seruice to the kynge, he that holdeth by escuage ought not so to do. Cap.8. The most honourable holde.

Also if the tenant whiche holdeth by escuage die, his heire being at full age, if he held by knightes fee, the heire shal pay but an.C.s. for his relieke, as it is ordeyned by the statute of magna carta.cap.ii but he that holdeth of the king by graund sergeantie, and dieth his heire beynge of full age, the heyre shal pay vnto the king for his relieke, the value of his landes or tenementes by yere, beside the charges and reprises, which he holdeth of ỹ kyng by graunde sergeantie. Relieke.

And it is to witte, that seriantie, in latine is seruicium, and so magna seriãtia in latin, is as much as magnum seruiciũ that is to say, a great seruice.

Also those whiche holde by Eschuage, ought to doo theyr seruice oute of the realme, but they that holde by graunde sergeauntie, for the moste parte ought

to

Cap. 8. How tenure by cornage is grãde sergeantie.

to do their seruices within the realme.

Also it is saied, that in the marches of Scotlande some holde of the king by cornage, that is to say, to blow an horne for to warne the men of the coũtrey. &c. whe they here that the Scottes or other ennemies wil come or entre into England. &c. which seruice is graund serieantie.

But if any tenaunt holde of any other lord thẽ of the king by such seruice of cornage ẏ is not graund seriantie, but it is knightes seruice, & draweth to hym ward mariage, & relike, for none may holde by graunde seriantie, but of the king onely.

Also a man may see in the .xi. yeare of Henrie the fourth, that Bokaine then beyng chiefe baron of the eschequer, came into the common place, bringinge with him a copie of recorde in these wordes. Talis tenet tantam terram de dño rege per seriantiã, ad inueniẽdum vnũ hominem and querrã infra quatuor maria. &c that is to say, such a mã holdeth so muche lande of our soueraigne lorde the king by seriantie, to finde one mã to warre with in the foure seas, and he demanded whether it wos graunde seriantie or petite seriantie, & Hanke then sayd that is was graund seriantie, for that it was seruice to be done by the body of a man, and if ẏ he may not finde a man to do the seruice

for

for him he must do it him selfe. To whom the other Justices assented. Bokain then said, the tenant in this case shall pay relefe to the value of the lande by yere to which was made none aunswere. Cap. 9.

And note that all they that holde of the kyng by graund sergeantie holde of the kyng by knightes seruice, and the kynge shall haue ward mariage, and relefe. But the kyng shall not haue of them escuage, if they holde not by escuage.

Petite sergeantie. Cap. ix.

TEnure by petite serganty is where a man holdeth his land of our soueraigne lorde the king, to yelde vnto him yerely a bowe, or a sworde, or a dagger, or a knife, or a speare, or a paire of gloues of mayle, or a payre of spurres gilte, or an arowe, or diuers arrowes or to yelde suche other small thynges, touching the warre. And such seruice is but Socage in effecte, for that suche tenaunte by his tenure ought not to go nor do any thynge in his owne proper person, touchynge the warre. But yelde and paye yerely certaine thynges vnto the kynge, as a man ought to pay a rente. Petite sergeantie is socage in effecte.

And note that no man may hold lande by graund sergeantie, nor by petite sergeantie, but of the kyng.

Bur-

Cap. 10.

Burgage. Cap. 1.

TEnure in burgage is where an aũcient borough is, of the whiche the kynge is lorde, and they that haue tenementes within the borroughe, holde of the kyng their tenementes, that euery tenant for his tenemente ought to pay to the kyng a certayne rente by yere. &c. And suche tenure is but tenure in socage & ỳ same maner is where an other lorde spirituall or temporall is lorde of suche a borow, & the tenantes of the tenementes in suche a borough holde of their lorde to pay eche of them yerely an annuel rente and it is called tenure in Burgage, for that the tenementes within the borough be holden of the lorde of the borroughe by certayne rent. &c.

Burgeses of the parliament.

And it is to witte, that the auncyente townes called borroughes be ỳ meest auncient & eldest townes that be within england. For ỳ townes that now be cities or counties, in old time were borroughes, and called borroughes, for of suche olde townes called borroughes, come these burgeises to the parliament when the kyng hath summoned his parliament.

Customes of townes

Also for the most parte such borroughes haue diuers customes & vsages, whiche be not had in other townes, for some borough had such custome, ỳ if a man haue

issue many sonnes and dieth, the yongest sonne shall inherite all the tenementes, which were his fathers, within the same borough, as heyre vnto his father, by force of the custome, the whiche is called borough English. Cap. 10.

Also in some boroughes by the custome the wife shall haue for her dower all the tenementes, which were her husbandes. Deuise by custome.

Also in some borough by the custome, a man may deuise by his testament his lãdes & tenemẽtes which he hath in fee simple within the same borough at the time of hys death, & by force of suche deuise he to whome suche deuise is made, after the death of the deuisour, may entre into the tenementes so to hym deuised, to haue & to holde to hym after the fourme & effect of the deuise, without any liuery of seysin therof to be made to hym.

Also though a man maye not graunt nor giue his tenementes to his wife duryng the couerture, for that, ỹ his wyfe and he be but one person in the law, yet by such custome he may deuise by his testament his tenementes to his wife, to haue and to hold to her in fee simple, or in fee taile or for terme of life, or for terme of yeres for that suche deuise taketh none effecte but after the death of the deuisour. W. 5. E. 4.

And if a man at diuers times make

diuers

Cap. 10. diuers testamentes and diuers deuyses, &c. yet the laste deuyse and will made by him, shall stand and abide, and the other be voyde.

Also by such custome a man maye deuise by his testament that his executours may alione & sel the tenementes that he hath in fee simple for certayne summe of money to distribute for the soule, in this case though the deuisour die seased of the tenementes, and the tenementes discend vnto his heire, yet the executours after the death of their testatour maye sell the tenementes so deuised, and put oute the heyre, and therof make a feoffement, alienation, and estate by dede, or without dede, to them to whome the sale is made.

How a man may make a lawefull estate where he hathe nothing in the lande.

And so may ye se here a case, where a man may make a lawful estate of lands and tenementes, and yet he hath nought in the tenements at the time of the estate made, and the cause is for that, that the custome and vsage is such. Quia consuetudo est certa causa rationabili vsitas priuat cõmunem legem. For a custome vsed vpon a certain reasonable cause barreth the cõmon law. And note wel no custome is to be alowed, but suche custome as hath bene vsed by title of prescription ỳ is to say, frõ time wherof is no minde.

But diuers opinions haue ben of time

out

out of minde, and of title of prescription, Cap.ii.
which is al one in the law, for some men Maxime
haue sayde, that the time of minde shalbe
sayde, from time of limittacion in a writ The opi-
of ryght, that is to saye, from the tyme of nions of
kynge Richarde the firste after the con- the title of
quest, as is geuen by the statute of west- prescripci-
mynster the first, for that a writ of ryght on in time
is the most hyest writ in hys nature that of minde.
may be And in such a writ a mā may re-
couer hys right of the possessyon of hys
auncesters of the most aucient time that
any man may, by any writ by the lawe.
&c. In so much that it is geuen by ẏ sayd
statute, that in such a writ none, shall be
hard to aske of the seysin of his aūcesters
of more longer tyme, then of the tyme of
kyng Richard afore sayde, therefore this Westm.i.
is proued that continuance of possession Capit.38.
or other customes and vsages vsed after
the same tyme, is tytle of prescryptyon,
and this is certayn. And other haue sayd
that well and truth it is, that seysin and
contynuaunce after the sayde lymittacī-
on, &c. is a tytle of prescryption, as is a-
foresayd, and for the cause aforesayd. But
they haue sayd that there is also an other
title of prescription, that was in the com-
mon lawe, before any statute of lymyt-
tacyon of wryttes. &c. And that was
where a custome or vsage, or other thing

Cap. xi. hath ben vsed, fro time, wherof minde of man cunneth not to the contrary.

Rule of prescription. And they haue sayd that this is proued by the pleading, where a mā will pleade a tytle of prescryption of custome, In this case he shall saye, that suche custome hath bē vsed fro time, wherof the memory of men cunneth not to the contrarye, that is almuche to say, when such a matter is pleded, that no mā then alyue, hath harde one proofe to the contrary, nor hath no knowledge to the contrary. And in so much that such title of Prescription was in the common lawe, and not put out by none statute. Ergo it abydeth as it was at the common lawe, and the soner in so much that the sayd limittacion of a writ of ryghte. &c. is of no longer tyme passed.

Inquyre. Ideo quere de hoc, and manye other customes and vsages haue suche auncient boroughes.

Also euerye borough is a towne, but not to the contrary, more shalbe sayde of customes in the tenure of villenage.

¶ Villenage. Cap. xi.

TEnure in villenage is most properly when a vyllayne holdeth of hys lord, to whome he is a vyllain, certaine lādes and tenementes after the custome of the maner, or els at the wyll of his lorde, & to do to his lorde villayne ser-

uice

nice, as to beare, bryng, and cary out the dung & filth of the lorde, out of the citie or maner vnto the lande of the lorde, there to lay it, cast it, & spreade it abroade vpon the lande, and to do suche other maner of seruice. And some free tenantes held their tenementes after the customs of certaine manours by such seruices, and theyr tenure is called tenure in villenage, & yet they be no villaynes. For no land holden in villenage, or villayne landes, or any customs rising of ỳ land shal neuer make free mā villain. But a villain may make free lande to be villain land to his lorde. Cap. xi.

How som holde in vilenage & be no villaynes.

As if a villayne purchase lande in fee simple or in fee tayle, the lorde of the villain may enter into the land, and put out his villayne and his heires for euer, and after the lord if he will may let the same land to the villayne to hold in villenage.

And if a feoffement be made to a certayne person or persons in fee to the vse of a villayn, or if a villaine, or any other persons be enfeoffed to the vse of a villain what estate so euer the villaine hath in the vse in fee tayle, for terme of lyfe, or yeres, the lorde of the villayne may entre in al those landes and tenementes, lykewyse as if the villayne hadde bene alone seised of the demesne. And that is by the statute of anno. 19. H. 7. Cap. 15.

Cap. xi.

But if a freeman will take any landes or tenementes to holde of his lorde by such villayne seruice, that is to say to pay a fine to his lorde for his mariage, or for the mariage of his sonne, or his doughter then shall he pay suche a fine for the mariage. &c. for that it is the folly of suche a freeman to take in suche fourme landes or tenementes, to holde of his lorde by suche bondage, yet that maketh not the free man a villayne.

Diuision of a vilain T. 1. H. 4.

Also euery villayne either he is a villayne by prescription, that is to saye, he and his auncestors haue ben villaynes time out of mynde, or he is villayne by his owne confessyon in court of recorde.

But if a free man haue diuers issues & after confesseth him selfe to be villayne to an other in court of recorde, yet his issues whiche he hath before the confession be free, but the issue whiche he shall haue after the confession, &c. shalbe villaynes.

What maner of lāde purchased by a villaine is good.

Also if a villayne purchase landes, and alyeneth the same landes to an other before his lord entre, then the lord may not entre. For it shalbe iudged his owne folye that he entred not when the land was in his villaynes handes.

Also it is of his other goodes, for if the villain die and sell, or giue goodes to an other, before that the lorde sease the good

then

then the lorde may not seale them, but if the lorde before any such sale or gift commeth within the house of the villayne, where such goodes be, and there openly amonge the neighbours claime the same goodes to be his, and so seiseth parcell of the same, in name of seisin of al the goods &c. This is sayed a good seisin in the law And the occupacion that the villayn hath after suche clayme in the goodes, shall be taken in the law in the right of the lorde. But if the king haue a villaine that purchaseth landes and alieneth before that the kyng entre, yet the kynge may enter into the lande, into whose handes so euer the lande commeth. Or if the villayne bie goodes, and selleth them before that the kyng seyseth the goods, yet the kyng may seise them in whose handes so euer they be. Quia nullum tempus occurrit regi. For no tyme renneth agaynst the kynge.

Cap. xi.

A good seisin.

Maxime.

Also if a man let lande to an other for terme of life, saynge the reuercion to him, and a villain purchaseth of the lessour the reuercio in this case it seemeth ỹ the lord of the villayn may incontinente come to the land & claime the same reuersion, as lorde of the same villaine, and by this clayme, the reuercion is incontinent in

When the lorde shall clayme reuercion or auouson purchased by his villayne.

Cap. 11.

him for any other fourme he maye not come to the reuercion, for he may not entre vpon the tenant for terme of life, and if he ought to abide till after the death of the tenaunt for terme of life, then happely he might come to late. For peraduenture the villayn will graunte or alyene the reuercion to an other in the life of the tenaunt for terme of life.

In the same maner it is where a villayne purchaseth the auowson of a church ful of an incumbent, the lorde of the villayn may come to the saide churche and clayme the sayd auowson. And by this clayme the auowson is in him, for if he ought to abide tyll after the death of the incumbent, & then presente his clarke to the sayd church. Then in the meane time the villayn might alyen the auowson, &c. & so put out the lorde frō his presentacō.

Diuision Villayne Regardāt.

Also there is villayne regardant and a villayne in grosse. Villayne regardant is if a mā be seised of a manour, to which a villaine is regardante, and he that is seased of the sayd manour, or they whose estate he hath in the same manour haue ben seysed of the sayd villayne, and of his auncestors, as villaines regardant to the manour, fro time out of minde.

Villain in grosse.

And villayne in grosse is where a man is seised of a manour, to the which a villaine

layne is regardant, and he graunteth the same villayne by his dede vnto an other, thē he is villain in grosse, & not regardāt Cap.11.

Also if a man and his ancestors, whose heire he is, hath ben seased of a villaine, & of hȝ ancestors, as villaines in gros, time out of minde, such be villaynes in grosse.

And note well, that of suche thynges, whych may not be graunted noȝ alienedwithout dede oȝ fine, a mā that wil haue such thynges by prescription, may not otherwise prescribe but in hym & his auncestors whose heyre he is, & not by these woȝdes in him in those, whose estate he hath, foȝ that that he may not haue theyȝ estate without dede oȝ other writyng the whyche behoueth to bee shewed to the court, if he will haue any aduauntage of this, and bicause that the graunt and the alienacion of a villain lieth not without dede oȝ other writing, a mā may not prescribe in a villain in grosse, without shewyng of writynge, but in hym selfe that claimeth the villain, and in his ancestors whose heire he is. But of those thynges which be regardant oȝ appendāt to a manour, oȝ to other landes oȝ tenementes a man may prescribe, that he & they, whose estate he hath, were seysed of the manour oȝ of such thinges as regardantes oȝ appendauntes to the manoure, oȝ to suche

A fourme of prescription.

Cap. xi. landes and tenements. &c. from time out of mynde. And the cause is for this, that such a manour, landes, and tenements, may passe by alienacion without dede. &c

Regardāt And it is to witte, that nothyng is named regardāt to a manour but a villain But certeine other thinges as auowsons,

appēdant. and comune of pasture. &c. be named appendantes to the manour, or to other landes and tenementes.

Also if a man will in courte of recorde

In grosse. knowledge hym selfe to be a villayn, that neuer was villayne before, suche one is villayne in grosse.

Also a man that is villayne is called

Nieke and wayue. villayne, and a woman that is villayne, is called nief, as a man that is outlawed is called an outlawe, and a woman that is outlawed is called a wayue.

Also if a villaine take a free woman to

Justi. li. i. titi. de ingenuis. wife, the issues betwene them shalbe villaynes. But yf a nieke take a free man to

Sufficit autē liberam fuisse matrem. husbād, their issues shalbe free. And that is contrary to the lawe ciuile, for there it is sayde that partus sequitur ventrem.

Also no bastard maye be villayne, but

Spurius. if that he will knowledge hym selfe to be a villayne in courte of Recorde, for he is in the lawe, Quasi nullius filius, as the sonne of no man, for that he may be inheritour to no man.

Also

Also euery villayne is able and free to sue al maner of actiõs againſt euery person except againſt his lord, to whome he is a villayne, and yet certaine actions he may haue againſt his lord. For he maye haue againſte his lorde an action of appeale for the death of his father or of his other auncetters whose heyre he is. Cap. xii.

Also a niece whiche is rauiſhed by her lord may haue appele of rape againſt hi. When the villayne ſhall haue action of dette or treſpaſſe againſte his lorde.

Also yf a villaine be made executour to an other and the lord of the villaine was indetted to the teſtatours in a certayne ſumme of money, the which is not paied in this caſe the villayne as executoure to the teſtatour, ſhall haue an action of det againſt his lord, becauſe he ſhal not recouer the dette to hys proper vſe, but to the vſe of his teſtatour.

Also the lord maye not take out of the poſſeſſion of ſuche a villayne that is executour, the goodes of the dead, and yf he do, the villain as executour ſhall haue an action of treſpaſſe againſte his Lorde, for the ſame goodes ſo taken, and recouer damages to the vſe of the teſtatour.

But in all theſe caſes it behoueth the lorde whiche is defendaunt in ſuche actions to make proteſtation, that the plaintiſe is his villayne, or elles the villayne ſhall be fraunchiſed thoughe the matter Proteſtation.

Cap. 11.

be founde for the lorde, and agaynste the villayne, as it is sayde.

Tryal of villenage.

Also if a villayne sewe an action of trespas, or other action agaynst hys lord in one shyre, & the lord sateth that he shall not be answered for that he is villain regardant to his manour in an other shire and the plaintife sayth, that he is franke and of free state, & no villayne, this shall be tried by the shire, where the playntife hath conceyued his action, and not in the shyre where the manour is, and this is in fauour of libertie, as it is adiudged. An. 40. Ed. the third. And for thys cause was made a statute in the. 11. yere of Rychard the second, cap. 2. the tenure of which ensueth in such forme.

The wordes of the statute.

Also for that where many villaynes and nietes, as well of great lordes, as of other folke, as well spiritual as temporal flee, and go into cities, townes, and places franchised, as the Citye of London and other lyke places, and layne dyuers suites agaynst theyr lordes, because they would make them selfe to be enfraunchised by the aunswere of theyr lord, it is accorded & asseted, that the lordes nor none other shalbe forbarred of theyr villaynes because of theyr answere in the law. By force of whyche statute, yf any villayne will sue any maner of action to his owne

vse

vse in any shire where it is harde to crie
er. agaynst his lorde, his lorde may chose
to pleade that the plaintife is his villain
or to make protestation that he is his
villayne and to pleade an other matter
in barre, and if they be at issue, and the
issue be founde for the lorde, then the vil-
layne is villayne as he was before, by
force of the same estatute. But if the issue
be founde for the villayn, then is the vil-
layne franke and free, for that the lorde
tooke not the beginning for his plee, that
the villayne was his villayne, but take it
by protestacion.

Also the lorde may not mayme his vil-
layne, for if he mayme his villain he that
of ỳ be endited in the kynges sute. And if
he be of that atteinted, he shal for ỳ make
greeuous fine & ransom to the kyng. But
it semeth, that the villayn shall not haue
by the law any appele of maime against
his lorde, for in appele of mayme a man
shal not recouer but his domages. And if
the villayn in ỳ case recouer domages a-
gaynst his lorde, & hath therof execution,
that lorde may take that that the villayn
hath in execution for the villayne, and so
the recouery standeth voyde.

Also if the villain be demaundant in an
actiõ royall, or plaintife in action perso-
nall against his lorde, if the lorde will plede

Wherfore a villaine may not sue an ap-pele of mayme a-gainst his lorde.

in

Cap. II.

in disability of his person, he may not make playne defence, but shall defende but the wronge & the force, & demaunde iudgement, if he shalbe aunswered, and shew his matter by and by, how he is villayne, and demaunde iudgement, if he shall be aunswered.

Non abilitie.

Villayne.

Also. vi. maner of men there be, agaynst whom if they sue actions. &c. Judgement may be asked, if they shalbe answered.

In outlaw.

One is, where the villayne sueth action. &c. against his lorde, as in case aforesayd. The second is where a man is outlawed vpon an action of det or trespasse, or vpon any other action of enditement the tenant or defendant may shew al ỳ matter of recorde, and the outlawry, and demaund iudgement if he shalbe answered because ỳ he is out of the law to sue any action, duryng the time ỳ he is outlawed

In alyen borne.

The thirde is where an alien ỳ is borne out of the aligiaunce of our soueraigne lord the kyng, if such alien sue any action royall or personall, ỳ tenant or defendant may say, ỳ he was borne in such a countre, which is out of the kinges alegiance & aske iudgement if he shalbe answered.

A man cõdemned in præmunire

The fourth is wher a mã by iudgemente giuen against him vpon a writte of præmunire facias, &c. is out of the kings protection, if he sue any action, & the tenant

or defendant shew all the record against him, he may aske iudgement if he shalbe answered, for the law, & the kinges writ ben the thinges, by which a man is protecte & holpen, & so duryng the time that a man in such case is out of the kyngs protection, he is out of ꝑ helpe and protect by the kynges law, or by the kynges writ. Cap. xi.

The fifth is, wher a man which is entred and professed into religion, such an action, the tenant or defendant may shew that suche one is entred into religion in such a place into the order of saint Benet and is there a monke professed, or in the order of friers, minours, or preachers, & is there a frier professed, and so of other orders of religion. &c. and aske iudgement if he shall be answered. A religious man.

And the cause is for this, that when a man entreth into religion, and is professed, he is dead in the law. And his sone is next cosin incontinente shall inherite him, as well as thoughe he were dead in deed: and when he entreth into religion, he may make his testament, and his executours, and they may haue an action of dette due to him before his entre into religion, or any other action that executours may haue, as if he were dead in deede. And if he make non executours when he entreth into religion, then the ordi- A man excommunicate.

Cap. 11. ordinary may committe the administration of his goodes to other men as if he were dead in deede. The firte is where a mā is accursed by the law of holy church and he sueth an action royall or personal the tenaunt or defendant may pleade, that he that sueth is accursed, and of this it behoueth him to shew the Bisshoppes letters vnder his seale, witnessynge the accursing and aske iudgement, if he shal be answered. &c. But in this case if the demaundaunt or playntife cannot denie it, the writte shall not abate but the iudgement shalbe that the tenant or defendant shall go quit without day for this that when the demaundant or playntife hath purchased his letters of absolution, and sheweth then the court, he may haue a resommons or a reattachement vpon his original, after the nature of his writ &c. but in the other fiue cases the writte shall abate. &c. if the mattier shewed may not be gayne sayd.

H. 11. R. 1. Also if a villayne be made a seculer preest, yet his lord may sease him as his villain, & sease his goods &c. But it semeth that if the villaine enter into religion, & is professed, &c, that ỳ lorde may not take him nor sease him, for that he is dead in the lawe, no moze then if a free manne take a niese to his wife, the lord may not take

take ne ſeaſe the wyfe of the huſbād. But his remedy is to haue an action agaynſt the huſband, for that he toke hys wyfe to wife without his wil and licence. And ſo may the lorde haue an action agaynſt the ſoueraygne of the houſe that taketh and admitteth his villayne to be profeſſed in the ſame houſe, without licence and will of his lorde. &c. and ſhall recouer hys damages to the value of the villayne. For he that is profeſſed monke. &c. ſhall be a monke, and as a monke ſhalbe taken for terme of hys life natural, except he be deſayned by the lawe of holy Churche, and he is holden by hys religyon to kepe hys cloyſter, and if the lord may take him out of his houſe then he ſhoulde not lyue as a dead perſon, nor after his religion which ſhould be inconuenient. &c. Lay. xii.

Likewiſe yf there be wardeyne in chyualry of body, & of lande of a childe with in age, if the childe when he cōmeth to the age of. xiiii. yeares, enter into religion, & is profeſſed, the Wardeyne hathe none other remedye, as to the warde of the bodye, but a writte of rauyſhemente of warde agaynſte the ſouerayne of the houſe. And yf any beynge of full age, that is couſyn and heyre vnto the chylde enter into the lande, the wardeyne hath

no

Cap. xi. no remedy as to the ward of the land, bicause that the entre of the heyre of the chylde is lawfull in such case.

Also in many diuers cases the lorde maye make manumission and in franchesinge to his villayne.

Manumissio explicita. Manumission is properly when the lord maketh his dede to hys villayne to enfraunchise hym by this worde Manumittere, whiche is almuch to saye, as extra manum, et extra potestatem alterius ponere, as to put hym out of the handes and the power of an other. And for thys that by suche a deede the villayne is put out of the hande and power of his lorde it is called manumission. And so euerye maner of enfraunchesinge made to a villayne, may be sayde Manumission.

Manumissio implicita. Also yf the lord make to his villayne an oblygacyon of a certayne sum of money, or graunt vnto hym by his deede as annuitie, or let hym by hys deede landes or tenementes for terme of yeres, the villayne is enfraunchised.

Also if the lorde make a feoffemente to his villayn of any landes or tenementes by deede or withoute deede, in fee simple fee tayle, or for terme of lyfe, or for terme of yeres, and deliuereth vnto hym seysin this is an enfraunchysing, but if the lord make to hym a lease of landes or tenementes

mentes to hold at the wil of ẏ lord by dede or without deede, this is no enfraunchesinge, for ẏ he hath no maner of certayntie, nor fuertie of his estate, but that the lord may put hym out when he will. Cap. xi. No enfrãchesing.

Also if a lorde sue agaynst his villayne a precipe quod reddat yf he recouer or be no sute after apparance, this is a manumission, for this that he maye lawfully enter into the lande without such suyte.

In the same maner it is, yf he sue against hys villayne an action of dette, or of accompt, or of couenant, or of trespas or suche other, this is an enfraunchesinge &c. for this that he maye enprison his villain, & take his goods without such sute.

But if the lord sue his villayne by appeale of felonye, where he is endyted therof before, this is no enfraunchesinge to the villayne, thoughe the matter of the appeale is founde agaynste the lorde, bycause that the lord may not haue the vyllayne hanged without such suyte But yf the villaine were not indited of the same felonye before the appeale sued agaynste him, and after is acquited of the sayde felonye, then he shall recouer damages agaynst hys lord for the false appeale. And in thys case the villayne is enfraunchesed bycause of the iudgement of damage that was geuen to hym agaynst his lord No enfrãchesing.

Cap. 11.

And more cases and matters there be by the which a villaine may be enfraunchesed against hys lorde. Sed de illis quere.

Irrita prescriptio.

Also yf a lorde of a manoure wyll prescribe, that it hath ben accustomed within hys manour, time out of mind, that euery tenaunt within the same manoure that marieth his doughter to anye man without licence of the lord of the manour shall make fine to the lorde for the tyme beyng this prescriptiō is voide. For none ought to make suche fines but onely villains for euery fre man may frely marie his doughter to whome it pleaseth hym and his doughter. And bicause that thys prescription is agaynst reason suche prescription is voyde.

The custome of Gauell kinde.

But in the shire of Kent, of landes and tenementes holden in Gauelkind, whereby that custome it hath ben vsed time out of mynde that the chyldren males ought euenly to inherite, whiche custome is allowable for this that it is with some reason, bycause that euery son is as greate a getleman as the elder sonne, & by reason that more great honour, and valour shall growe to suche childe, then yf he had nothyng by hys auncesters, where peraduenture he might not so growe, &c.

The custome of borough englishe.

Also where by custome called borough englishe in some borough the yonger son shall

shal enherite all the tenementes.&c. This custome also tendeth with reason, because that the yonger sonne if he lacke father and mother, because of his yong age may lest of al his brethren helpe him self. &c. But if a man wil prescribe, that if ani cattell were vpon the demesne of his manour, there doyng damage, that the lorde of the manour for the time beyng hath vsed to distrayne them, and the distresse to retayn till sine were made to him for the damages at his will, this prescription is voyde because it is against reason, that if wrong be done to a man, that he therof shuld be his owne iudge, for by such way if he had damage but to the value of an halfepeny, he might assesse and haue therfore an E.li. whiche should be agaynst al reason and so such prescription, or any other prescription vsed, if it be agaynst all reason ought not nor will not be allowed before iudges. Quia malus vsus abolendus est.

Cap.11.

Iniqua prescriptio.

Rentes. Cap.xii.

Diuision. Rent seruice.

THre maner of rentes there be, that is to say, rent seruice, rent charge, & rent secke. Rent seruice, is where a man holdeth his lād of his lorde by fealty and certain rent, or by homage, fealty and certain rent, or by other seruices and certayn rente, & if rent seruice at any day

Cap. 12.

that it ought to be payde, be behinde, the lord may distrayne for the comon right.

And if a man now will geue landes or tenementes to an other in tayle, yeldyng to him certayn rent by yere, he of comon right may distreine for the rente behinde, though that suche gifte was made without a deede, because that such rent is rent service.

In the same maner it is: if a lease be made to a man for terme of his life, or an others life, yeldyng to the lessour certain rent, or for terme of yeres, yeldynge certaine rente. &c. but in suche case where a man vpon suche a gifte or lease will reserue to him rente service, it behoueth that the reuercion of the landes and tenementes be in the donour or in the lessour, for if a man wil make a feoffement in fee, or will giue landes in tayle, the remainder euer in fee simple without a deede reseruing to him certain rent, such reuersion is in the donour, and such a tenant holdeth his lande immediatly of the lorde of whom the donour helde.

The common lawe before the statute.

And this is by force of ỳ statute of westminster. 3. cap. 1. Quia emptores terrarū for before ỳ same statute if a mā made a feoffment in fee simple by deede or wont deede yeldyng to him and to his heires certain rent, this was rent service, & for this he might

might distreyne of common right. And Cap.12.
if he made no reuerrion of any rente, nor of any seruice, yet the feoffee holde of the feoffour by suche seruices as the feoffour held ouer his lorde nert aboue.

But if a man by deede indented at a day Rente charge.
make such a gift in the taile, the remainder ouer in fee or a lease for terme of lyfe the remainder ouer in fee, or a feoffement in fee, & by the same indenture reserueth to him and to his heires a certaine rent, & that if ỳ rent be behind, ỳ it shall be lefull to him and to his heires to distreyne. &c. Such rente is rent charge, because suche landes & tenementes be charged of suche distresse by force of the writynge onely, and not of common right.

And if such a man in such a dede indented, reserue to him & to his heyres certain rent, wout any suche clause set or put in the dede, ỳ he may distrain. &c. then suche rent is rent secke, because ỳ he can not distrayne to haue the rent, if it be denied by ỳ same distres & if he was neuer seised in this case of the rent, he is without remedie, as shall be sayde hereafter in this chapiter. Rent seck.

Also if a man seased of certayne lande grant by his dede, word or by indēture a yerely rent issuing out of ỳ same lande to an other in fee simple, or in fee tayle, or

Cap. 12. for terme of life. &c with clause of distres &c. then this is rent charge. & if the grant be without clause of distresse then it is rent secke. And note wel, that rent secke, Idem est q redditus siccus, for that, that no distresse is incident to it.

Annuitee. Also if a man by his deed graunt rent charge to another, and ꝑ rent is behynde the graunteee may chuse if he will sew a writ of annuitie of it against the grauntour, or distrein for the rent behinde, and the distresse to withholde, till he be of that paied. But he may not do and haue both together, for if he recouer by writte of anuuitie, then the lande is discharged. And if he sew not a writ of annuitie, but distraine for the arrerages, and the tenãt sewth a Replegiare. &c. and the graunte auoweth the taxynge of the distresse in the lande. &c. in courte of record, then is the lande charged, and the person of the grauntour discharged of an action of annuitie.

Estoppel. Also if a man will that another shall haue rent charge issuyng out of his landes, but he wyll not that his person shall be charged in any maner by a writte of annuitie, then he may haue such a clause in the ende of his deede. Prouiso semper quod presens scriptum nec aliquid in eo specificatum, non aliqualiter se extendat

Proviso

ad

ad onerādum personam meam, per hec ne vel actionem de annuali redditu. Sed tantummodo ad onerandū terras & tenementa predicta, de annuali redditu predicto, then is the lande charged, and the person of the grauntour discharged. Cap.12.

Also if a man make such a dede in such maner, that if. A of B. be not yerely paide at the feaste of christmas for terme of hys lyfe. xx.s. of lawefull moneye, that then it shalbe lawful to the sayd. A. of B. to distrayne for it, in the maner of E &c. thys is good rente charge, bycause that the manour is charged with the rent by way of distres, & yet the person hym selfe that made such a decde, is dyscharged in thys case of an action of annuitie bycause that he graūted not by his deede any annuity to the sayde A. of B. but graunted onely that he may distrayne for hys annuitye.

Also yf a man haue a rente charge to hym and to his heires, issuyng out of certayne lande, if he pourchase anye parcel of the lande, to hym and to his heyres, all the rent is extinct, and the annuitie also, bicause that rent charge may not in such maner be apportioned, but yf a man that hath rente seruice purchase percell of the lande, whereof the rente is goynge oute this shall not extincte all, but for the portion, for the rent seruice in such case may Extinguishmēt.

Cap. 12. be apporcioned and shall be apporcyoned after the value of the lande. But yf a tenante holde his lande by seruice, to yelde to hys lord yerely at such a feast, an horse or an hauke, or such thyng semblable, yf in suche case the lorde purchase parcell of the lande, the seruice is gone bycause that such seruice maye not be seuered nor apporcyoned. But yf a man holde hys land of another by homage, Fealtye, and Escuage, and by certayne rente, yf the lorde pourchase parcel of the lande. &c. in suche case the rente shall be apporcyoned, as is aforesayde. But yet in this case the Homage and fealty abydeth hole to the lord, for the lorde shall haue the Homage and fealtie of his tenant for the remnant of ẏ landes and tenementes holden of him as he hadde before. &c. for this that suche seruices be no annuel seruices, and may not be apporcyoned. But the escuage maye & shall be apporcyoned after the quantitye and rate of the lande.

Rente charge apporsioned.

Also if a man haue a rente charge, and his father purchaseth parcell of the tenementes charged in fee and dieth, and that parcel descendeth to hys sonne that hathe the rente charge, no we this rente charge shal be apporcioned after the value of the lãdes as it is aforesayd of rent seruice because that suche a porcyon of the lawe

purcha-

purchased by the Father commeth not to the sonne by his owne deede, but by discent and course of the law.

Also yf there be lande and tenaunte and the tenaunt holdeth of his lorde by fealtie and certayne rent, and the lord graunteth the rente by hys deede to another. &c. keppynge to hym the fealtye, and the tenaunte attourneth to the graunte of the rente, nowe suche rente is rente secke to the grauntee, for thys that the tenementes be not holden of that graunte of the rente, but be holden of the Lorde that receyued to hym the fealtie.

And in the same maner it is where a man holdeth his lande by homage, fealty and certayne rente, if the lord graunt the rente, saupnge to him the homage, suche rente after suth graunt is rent secke.

But where landes or tenementes ben holden by homage, fealtye, and certayne rentes, yf the Lorde will graunte the homage of his land, by his deede to another saupnge to hym the remnaunte of the serutes, and the tenaunte attourneth to hym after the forme of the graunt, nowe in this cafe the tenaunte holdethe hys lande of the graunte and the Lorde that grauteth the homage, shal not haue but the rente as rente secke, and shall neuer distreine for the rent, for this that neither

Cap. 12. homage nor fealtie, nor escuage maye be
said seck, for no such seruice may be sayd
secke, for he that hath or ought to haue of
his tenaunt homage, or fealty, or escuage
maye of common right distrayne for it if
it be behinde. For homage, fealty, and es-
cuage ben seruices, by whiche landes and
tenementes be holden. &c. and be such that
in no maner may be take but as seruices
But other wyse it is sayd of rente, that
was ones rent seruice, for this that whē
it is severed by the graunte of the lorde,
frō that other seruices, it may not be said
rent seruice, for this that he hath not to it
fealty, whiche is incident to euery maner
of rent seruice, and for this it is said rent
secke, if the lord cannot graunt such rent
with distresse as it is sayd.

Also yf a man let lande to another for
terme of lyfe, reseruyng to hym certaine
rent, if he graunt the rente to another by
his deede, sauing to him the reuercion of
the lande so letten. &c. suche terme is but
rente secke, for this that the graunte hath
nothyng in the reuercion of the lande.
But if he graunt ẏ reuercion of the lande
to another for terme of lyfe, & the tenaunt
attourneth. &c. then hath the graunteth
rente as rent seruice, bycause he hath the
reuercion for terme of hys lyfe.

And so it is to be vnderstande, ẏ if a mā
gyue

gyue landes or tenementes in the tayle, reseruyng to him and his heyres certain rent, or let lande for terme of lyfe, reseruyng certayne rent, if he graunt the reuercion to an other, and the tenaunt attourneth, all the rent and seruice passeth by the worde of the graunt of reuercion, for this that all the rent & seruice in such cases be incidentes to the reuertion, and passe by the graunt of the reuercion. But though he graunt the rent to another, the reuercion passeth not by suche graunt &c. And so note well the diuersitie, and it is holden 9. 12. E. 4. But it is adiudged an. 26. li. assisarum, where as the seruices of the tenant in tayle were graunted that this was a good graunte, yet notwithstandyng the reuercion remayneth. Lay. 124. Nota.

Also if there be lorde, mesne, & tenant, and the tenant holde of the mesne by the rente of fyue shyllynges and the mesne holdeth ouer by. xii. d. if the lorde aboue purchase the tenancie in fee, then the seruice of the mesnaltie is extincte, for this that when the lorde aboue hath the tenãcie he holdeth of the lord next aboue him, And if he ought to holde it of him that was mesne, then he should hold one selfe tenancie immediately of dyuers lordes, which should be inconuenent, & the law will soner suffer a mischief then an incõuenience Maxime.

Cap. 12. uenience. And for this the seignorie of the meinaltie is extinct, but in so muche that the tenant helde of the meine by.v.s and the meine helde but by.vii.d. so that he had more aduauntage by.iiii.s. then he payde to his lord, he shal haue the said iiii.s. as a rent seeke yerely of the lord y purchased the tenancy.

Remedy. Also if a man that hath rente Secke is once seised of any parcell of the rent and after if the tenant will not pay the rent y is behinde, this is his remedy. It behoueth him to go by himselfe, or by an other to the landes and tenementes, whereof the rent is issuyng, and there to demaund the arrerages of the rente, and if the tenãt denye to pay it, this denyng is a disseisin of the rent. Also if the tenant at the time be not ready to pay it, this is a denying and a disseisin.

Also if the tenaunt nor none other be dwellyng vpon the landes or tenemẽtes to pay the rent when he asketh the arrerages, &c. this is a denyng in law, and a disseisin in deede, and of such disseysin he may haue a writte of nouell disseysin agaynst the tenant and recouer the disseisin the rent & the arrerages and his dãmages and costes of his writte, and of his plee &c. And if after such recouery and execution had, the rent be another time de-

nied

nied him, then he shall haue a redisseysin, and recouer double damages. Cap. 12.

And it is to be had in minde, that this name assise is equiuocum. For sometime it is taken for a Iurye, for in the begynnyng of the recorde of assise of nouell disseysin the recorde shall begin thus. Assisa ben. recogn. &c. whiche is to say, that Iuratores ben. recogn. And the cause is for this, that by the writte of assise it is commaunded to the sheriffe, quod faciat. xii. liberos & legales homines de vicineto. &c. videre tenementum illud, & nomina eorum inbreuiari, & quod sum̃ eos per bonos sum, quod sint coram iusticiariis. &c parati inde facere recoga. Assisa est equiuocum

And for this that by force of suche an originall writte a panell by force of the same writte ought to be retourned. &c. it is sayde in the beginnyng of the recorde in assise. Assisa ben. recogn.

Also in a writte of right is commonly sayd, that the tenant may put him in gods and in the great assise.

Also there is a writte in the Register called, De magna assisa eligenda, so is this a good proue, that this maner assyse sometime is put for the Iurie, and some time it is taken for al the writte of assise and after that entente is moste properly and most commonly taken, as a writ of assise

Cap. 12.

assise of nouel disseisin is taken for al the writte of assise of nouel disseisin.

In the same maner assise of common pasture is taken for all the writ of assise of common pasture, and assise of mortdauncestre is taken for al the writ of assise of mortdauncestres, and assise of darreyne presentment, is taken for all the writte of assise of dareyne presentmente but it semeth, that the cause is, why such writtes at the beginning were called assises, for this that by euery suche writ it is commaunded to the sheriffe, that hee sommon xii. &c. which is as much to say, that he ought to sommon a Jury. &c.

Seisin of rent seche.

And sometime assise is taken for an ordinaunce for to set certaine thynges in a certaine rule and disposicion, as an ordinaunce that is entred in the ancient estatutes is called assisa panis & seruicie.

Also if there be Lorde and tenaunte and the lorde graunteth his rente of his tenant by deede to an other saynge to him the other seruices, and the tenaunte attourneth, this is a rente seche, as is aforesayde. But if the rente be denied him at the nexte day of paymente he hath no remedy, for this that he hadde not there of any possession. But if the tenaunte when he attourneth to the grauntee, or after wil geue a peny or an halfepeny to

the

the graunte in the name of seysin of the rent then yf after at the nexte day of paymēt the rent be denied hym, he shal haue assise of nouel disseysin. Cap.12.

And so it is, if a man graunte by hys deede a yearely rente issuynge out of his lande, to another. &c. If the grauntoure then after paye to the grauntee a peny or an halfepeny in the name of seisin of the rente, then after the first day of payment the rente be denyed, the grauntee maye haue assise or els not.

Also of rente seeke a man may haue assise of mortdauncester, or a writte of ayel or cousinage, and all other maner of actions reals, as the cause lieth, as he may haue of any other rente.

Also there be three causes of disseysin of rent seruice, that is to saye rescous, repleuin and enclosoure. Three maners of disseisin.

Rescous is when the lorde distraineth in the land holden of him for his rent behinde, if the distresse be rescued from him or the lord come vpon the lande, & would distrayne, and the tenaunte or an other man will not suffer him. &c. Rescous.

Repleuin is when the lorde hathe distreyned, and repleuin is made of the distresse by writte, or by playnte, &c. Repleuin.

Enclosour is if the lādes & tenementes be so enclosed, ỳ the lorde maye not come within Enclosour.

Cap. 12. within the landes and tenementes for to distreyne. And the cause why suche thynges is done by dissesins made to the lord is for that, that by such thynges the lorde is disturbed of the meane, by whiche he ought to have had and come to his rent, that is to say of the distres.

And foure causes be of disseisin of rent charge, that is to saye, rescous, replevin, enclosour and denyer, for denyinge is a disseisin of rente charge, as it is aforesaid of rent secke.

And two causes be of disseisin of rente secke, that is to say enclosour and denier.

And it semeth that there is an other cause of disseisin of all the three rentes aforesayde, that is to say, when the lord is goynge to the lande holden of hym, for to distreyne for the rente beynge behynde, and the tenaunt hearynge this encountreth him, and forstalleth hym the waye with force and armes, & manaceth hym in suche fourme that he dare not come to the lande for to distreyne for his rent behynde. ꝛc. for doubte of deathe or bodilye hurte, this is a disseisin, for this that the lorde is disturbed of the meane whereby he ought to come by his rente, and so it is if by such forstallyng and manacyng, he that hathe rente charge, or rente secke, is forstalled, or dare not come to the lande

to

to aske the rente behinde.

Thus endeth the second booke.

PARCENERS.

Cap.i.

Parceners be in two maners that is to saye, parceners, after the course of the common law, & parceners after the custome. Diuision. Parceners by the cõmon lawe.

Parceners after the course of the cõmon lawe be, where a man or woman seased of certaine landes or tenements, in fee simple, or fee taile, hath none issue but doughters and dieth, and the tenementes discende to the doughters, and the doughters enter into the landes and tenementes so to them discended, then they be called Parceners, and be but one heyre to theyr ancester. And thei be called parceners, for this, that by the writte that is called breue de participatione faciendo. The lawe will constrayne that Partition shall be made amonge them. And yf there be two doughters to whome the lande discendeth, then they be calle two parceners & yf there be three doughters, then they be called three parceners, and foure doughters foure parceners, and so forth.

Cap. i.

And yf a manne seased of landes in fee simple, or in fee tayle dye without issue of hys bodye begotten, and the tenementes discende to hys sisters, they be called parceners as is aforesayd. In the same maner it is where he hath no sisters, but the lande descendeth to hys auntes, they be parceners: but yf a manne haue but one doughter she maye not be sayd parcener but she shalbe called doughter and heyre.

Diuers maners of parceners.

And it is to witte, ỹ partition betwene parceners maye be made in diuers maners, one is when they agree to make partition, and make partition of the tenementes, as yf there be two parceners, to deuide betwene them the tenementes in two partes, euery parte by him self in seuerallye of euen value, and yf there be thre parceners to deuide the tenementes in thre partes in seuerallie.

An other partition there is, to chose by agrement betwene them and certaine of their frendes to make the partition of the landes and tenements in the fourme aforesayd.

And in such cases after such partition the elder doughter shall choose firste one of the partes so deuided, whiche she wyll haue for her parte, and then the seconde doughter after her, her parte &c. If it so be, that there be many sisters &c. If it be

be not that they ne be otherwise agreed betwene them, for it may be agreed betwene them, that one of them shall haue such tenementes, and an other such tenements, &c. wout any such former electiō. Cap.1.

And the part that the eldest sister hath is called in latin enitia pars, but if the parceners agree, that the eldest sister shal make partition of the tenementes in the forme aforesayde, and if she do, then it is sayde, that the elder sister shall chose last her parte, after eche of her other sisters. Enitia pars.

An other partition and allottyng there is, as if there be. 4. parceners, and after suche partition made of the landes euery parte of the lande is by it selfe written in a littell scrowe, & is couered al in ware, in maner of a littell ball, so that no man may se the scrowe, and then the foure balles of ware ben put in a bonet to kepe in the handes of an indifferent man, and then the elder doughter first shal put her hande in the bonet, whiche shall take a bal of ware & the scrow within the same bal for her part, and then ẏ seconde sister shall put her hande in the bonet, and shal take an other, and so then the third sister the thyrd bal &c. And in this case it behoueth eche of them to holde them to theyr chaunce and alotment.

Also an other partition there is, as

Cap. L. If there be foure parceners, and they wyl not agree, that particion shalbe made be twen them, then one of them may haue a writte de particione facienda, agaynste the other thre sisters, or two may haue a writ of particione facienda, agaynst the other two, or the third of them may haue a writ of participatione faciēda, against the fourth of their election.

Judgmēt And when Judgement shall be geuen vppon suche a writte, the Judgemente shalbe such, that particion shall be made betweene the parties, & the shirife in his proper person shall go to the landes and tenementes, &c. and that he by the othe of twelue true men of his Baylywike. &c. shal make particion betwene the parties the one parte of the same landes shall be assigned to the plaintife, or to one of the plaintifes, & an other part to an other. &c. not makyng mencion in the iudgemente of the eldest sister more then of the yongest. And of the particion that the shyrife hath thus made, he shall make notice to the Justices, &c. vnder his seale and the seales of the. xii. &c.

And so in this case may ye so, that the eldest sister, shal not haue the first electiō &c. but the shiriffe shall assygne the parte that she shall haue. &c.

And it may be that the shyriffe wyll

assygne

assigne first a parte to the yongest syster and the last parte to the elder. And note wel, that partition by agrement betwen parceners, may by the lawe be made among them, as well by worde withoute deede, as by deede. M.3.E.4. Cap.1.

Also if two meses discende to. ii. parceuers, & the one mese is worthe by yere xx.s. and that other but.x.s. by yere, in this case partition may be made betwen them, in such fourme, that the one parcener shal haue the one mese, and the other parcener shall haue the other mese, & he that shall haue the mese of. xx. shylynges and his heyres, shall pay a yerely rent of v.s. issuyng out of the same mese, to the other parcener, and to her heires for euer, because that euery of thē shall haue euen in value, & such partition made by word is good inoughe. And the same parcener that shal haue the rent of fyue.s. and his heyres may distreyne for the rente of cōmon right in ẏ same mese of the value of xx.s. if the rente of.v.s. be behinde at any time to whose hands soeuer ẏ same mese commeth, though there was neuer wrytyng made of it betwen thē of such rent. Rente charge.

In the same maner it is of partition of al maner of lādes and tenementes, &c. where suche rente is referued to one or to diuers parceners vppon suche parti- Distraned by commō right.

Cap. 1. cion. &c. but suche rente is not rent seruice but is rent charge of common right, had and reserued for regaltie of the particion.

And note wel, that none be called parcernes by the common law, but women of the heires of women, and whiche come by landes and tenementes by discent, for if sisters purchase landes or tenementes of this, they ben called iointenantes, and not parceners.

Also if two parceners of lande in fee simple make particion between them, &c and the parte of that one is more worth than the parte of the other: if they were at the time of particion of full age, that is to say of. xxi. yere, then the particiō alway shall abyde, & neuer be defeted: but if tenementes wherof be made particiōs be to them in fee tayle, and the part that one hath is muche better in yerely value then the part of the other, how be it that they be excluded during their lyues to defete the particion, yet if the partener that hath the leste parte in value hath issue & dieth, the issue may disagree to the particion, and enter and occupy the common that other parte that was allotted to her aunt, and so the aunte may enter and occupie in common that other part allotted to her sister, as no particion therof had ben made. &c.

Also

Also if two parceners of tenementes in fee take husbandes, & they and their husbandes make partition betwene them if the parte of the one be lesse in yerely value then the parte of that other durynge the lyues of the husbandes, the partition shalbe in his force and strength, & though that it shal stand durynge the lyues of the husbandes, yet after the death of the husbād, the wife ỳ hath the lesse parte. &c. may enter in her sisters part, as is aforesaid & defete the partition, but if the partitiō so made betwene the husbandes, was such that eche parte at time of the lottemente made, was egal of yearely value, & with out incūbrannce of former titles, then it may not after be defeated in suche cases. Lap. i.

Also if there be two parceners, and the yonger of them be within the age of xxi. yere, and partition is made betwene thē so that the part that is allotted to ỳ yonger, is lesse in value then the part of that other. In thys case the yonger durynge the tyme of her nonage, and also when she commeth to full age of xxi. yere, may enter into the portiō to her sister allotted &c. and defete the partition. But suche a parcener oughte to take hede, when she commeth to full age, ỳ she ne take to her owne vse al the profites of the tenements to her allotted, for then she agreeth to the Causes.

Cap. I.

partycyon at ſuche age, in whyche caſe the partycyon ſhall ſtande and abyde in hys force and ſtrength. &c. But peraduenture the profytes of the halfe thee maye take, leauyng the profites of the other halfe to her ſiſter.

Indulgẽtia iuris in pupillos.

And it is to wit, that when it is ſayde males & females be of ful age, that ſhalbe vnderſtande of the age of. xxi. yeare, for if any feoffement, or graunt, releaſe, confirmation, oblygacion, or anye other wrytyng before any ſuch age be made by any of them. &c. or that anye within ſuche age be bayliffe or receyuer to any man. &c. all is for nought, and may be auoyded.

Alſo a man before ſuch age may not be ſworne in no iury nor in no inquiſytion.

Alſo yf anye landes or tenementes be gyuen vnto a man in the tayle, whyche hath as muche lande in fee ſimple, & hath iſſue two doughters, and dyeth, and the doughters make partycion betwene thē, ſo that the landes in fee ſimple be allotted to the yonger doughter, in alowance of the other landes or tenementes tayled, allotted to the elder doughter, yf after ſuch partition made, the yōger doughter alyeneth the lande in fee ſymple to another in fee, and hath iſſue a ſon or doughter, and diethe, the iſſue maye enter in the tenementes tayled, and them to hold

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in propertie with their aunte. Cap. i.

And this is for two cauſes, one is for that the iſſue may haue no remedy of the land alienedby hys mother, for that that the lande was to her in fee ſymple, and in ſo muche that ſhe is one of the heyres in the tayle, and hath nothing recompenſed of that, that to her belongeth of the tenementes tayled. For this cauſe it is reaſon, that ſhe haue her purpart of the tenementes in taſle, and namely when ſuche partition maketh no diſcontinuaunce of the tayle, as ſhalbe ſayde hereafter in the chapiter of diſcontinuaunce. But the contrary is holden. M. 10. H. 6. that is to ſay, that the heyre may not enter vpō the partener, that hath the lande tayled, but is put to his formedone. Two cauſes.

Another cauſe is for that, that it ſhall be arected the folye of the elder ſiſter, that ſhe would ſuffer or agree vnto ſuche partition, where ſhe might haue had, yf ſhe woulde, halfe the lande in fee ſimple, and halfe of the tenementes in the tayle for her purpartye, and ſo to be ſure withoute damage. &c.

Alſo yf a man ſeyſed in fee of a plough lande by iuſte title, diſſeaſeth an infante within age, of another plough lande, and hath iſſue two doughters, and dyeth ſeaſed of both theſe plough lādes, the infant

Cap. i. then beyng within age and the doughters enter and make particiō, so that the one plough lande, is allotted to the purpart of the one, as percase to the ponger sister in aduaunce of that other ploughe land that is allotted to the purpart of the other. yf that after the infant entreth in the plough land, of the which he was dissessed vpon the possession of the parcener, that hath the same plough lande then the same parcener maye enter into the other plough land, that her sister hath and holdeth in percenerye with her, but if the ponger sister aliene the same plough lāde to another in fee simple, before the entre of the infant, and after the chyldes entre vpon the possession of the aliene, then she may not enter in the other plough lande for this ỳ by her alienacyon she hathe vterly dismissed her selfe, to haue any part of the tenementes as parcener. But if the pōger sister, before the entre of the infant make thereof a lease for terme of yeres, or for terme of life, or in fee taile, sauing the reuercion to her, & after the childe entreth there peraduenture it is otherwyse, for this that she dismissed not her selfe of all that, that was in her, but hath reserued to her the reuercion, and the fee simple. &c.

Also if there be. iii. or foure parceners that make particion betwene them, if the parte

part of one partener be defected by suche lawful entre, she may enter & occupy the other landes, withal the other parceners and compel them to make new partition of the other landes betwen them. &c. Cap. i.

Also if there be two parceners, and the one taketh an husband, and the husbande & the wife haue issue betwen them. And the wife dieth, and the husbande holdeth him in the halfe as tenant by the curtesy. In this case the parcener that survyueth and the tenant by the curtesy may well make partition betwen them. &c.

And if the tenant by curtesie wyll not agre to make partitiō, then the parcener that survyueth, may haue against the tenant by curtesie a writte de participatione facienda. &c. and compel him to make partition. But if the tenant by ỳ curtesie wil haue partition made betwen them and the parcener that survyueth wyl not haue it, then the tenaunt by the curtesie shall haue no remedy for to haue partition, for he may not haue a writ de participatione facienda, for this that he is nat parcener, for such a writ lieth for parceners onely. And so ye may se, that the writ de participatione facienda lieth agaynst tenant by the curtesie, & yet him selfe may not haue suche a writ. 20. 5. E. 3.

Parceners by the custome. Cap. ii.

Par-

Cap. 2.

Gauelkid.

PArcener by the custome be, where a man seased in fee simple, or fee taile of landes or tenementes that bee of the tenour called Gauelkind, within the shyre of kente hath issue diuers sonnes, and dieth, then such lands and tenementes shall discende to all the sonnes by the custome, and they euenly shall inherite, and make partition betweene them by the custome, as femals doo, and a writte de participatione facienda, lieth in this case as betweene females, but it behoueth in the declaration to make mention of the custome. Also suche custome is in other places in england, and also such custome is in North Wales.

Partitio alia a superiorib⁹.

Also there is another partition that is of another nature, and of another fourme then any of the partitions aforesayde be, as if a man seased of certayne landes in fee simple hath issue .ii. doughters and the elder is maried, and the father giueth parcell of the same landes to the husband with his doughter in frank mariage, and dieth seised of the remenãt the which remenant is of more and greater value by yere, then be the landes giuen in franke mariage. In this case the husband nor the wife shall haue nothing for their part of the said remenaunt, but if they will put theyr landes geuen in franke

franke mariage in hochpot, with the remenant of the lande with her syster, and if they wil not do so, than the yonger syster may hold and occupie the same remnant, and take to her the profittes onely and it semeth that this worde hochpot is in english a puddyng, for in suche a puddynge is not commonly but one thynge onely, but one thyng with an other togither, and for this it behoueth in such case to put the landes geuen in franke mariage with the other landes in Hochpot, if the husbande, and the wife wil haue any parte in the other remenant. &c. Cap. 2.

This worde Hochpot is but a terme of similitude. And is as muche to say, as to put the landes geuen in franke mariage, and the other landes in fee simple together. And this is to such entente, to know the value of all the landes, that is to say, of the landes geuen in franke mariage, and the remnant ẏ was not geuen, and then partition shalbe made in this forme that ensueth. Hochpot.

As put case a man be seysed of. xxx acres of lande in fee simple, euery acre in value. xii. d. by the yere, which hath issue ii. doughters, and the one is couert baron and the father geueth. x. acres of the. xxx. acres to the husbande with his doughter in franke mariage, and dieth seased of the

Cap. 21

the remenant, then the other sister shall enter in the remnant, that is to saye, in the twenty acres, and shall occupie it to her owne vse, excepte the husbande and the wife will put their ten acres giuen to them in franke marriage, with the other xx. acres in Hoshpot, that is to say, together, and then when ỳ value is knowen of euery acre, that is to say, euery acre is yerely worthe. xii. d. then the partition shall be made in suche sowne, that is to say, that ỳ husbād & the wife shal haue aboue the x. acres geuen to them in franke marriage. v. acres in sourvalty of the xx. acres, and that other sister shall haue the remenant, that is xv. acres of the. xx. acres ỳ the husbande & the wife had by the gift in franke marriage, and the other v. acres of the xx. acres, the husbande & the wife hathe as much in yerely value as the other sister hath, and so alway vpon suche partition the landes geuen in franke marriage deuide to ỳ donees, & to their heires after the fourme of the gifte. For if the other parteners shulde haue nothynge of this that is geuen in franke marriage of this shulde folow an inconuenience and a thyng against reason, that is to say, the franke marriage shulde be made voyde which the law will not suffer. &c.

And the cause why the landes gyuen

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in franke mariage, shalbe put in hochpot is, that when a man geueth landes and tenementes in franke mariage with his doughter, or with some other cousin, it is to vnderstande by the law, that such gifte made by suche wordes franke maryage, is an auancement of his doughter or of his cousin, and namely when the donour and his heyres shal not haue any rēt nor seruice of them excepte fealtye vnto the fourthe degree be passed. &c. and for suche cause the lawe is, that he shall haue nothynge of the other landes & tenementes descended to the other parceners. &c. but yf she will put the tenementes geuen in franke mariage in Hochepot, as is aforesayd, but if she wil not put the landes geuen in franke mariage in Hochepot, thē he shal haue nothing in the remnant for that this shalbe vnderstande by the law, that she is sufficientlye auaunced, to whiche auauncemente she agreed and holdeth her content.

Cap. 1.

Hochpot.

And the same law is betwene ẏ heires of the donees in franke maryage, & the other parceners, as to put in Hochepot. &c. If the donees in franke mariage dye before theyr auncesters, or before suche particion. &c. as to put in hochpot. &c.

And note wel that giftes in franke mariage was by the cōmō law before ẏ statute

Cap. x. tute of Westminster the seconde, and alway after so hath ben vsed & cõtinued. &c.

Also suche puttyng in Hochepot. &c. is where landes or tenementes, that were giuen in franke mariage descende fro the donours in franke mariage al only, for if the landes descende to the doughters by the father, the donour, or by the mother, the donour, or by the brother the donour or other auncesters, and not by the donour. &c. there it is other wyse, for in suche case the to whome suche gifte in franke-mariage is made, shal haue her parte, as if no such gift in frankemariage had ben made, for this that she was not auanced by them. &c. but by an other.

Also yf a man seysed of xx. acres of land, and euery acre of euen yerely value hauyng fiue two doughters, as it is afore sayd, and giueth of thys to the housbande of the doughter. xv. acres in franke mariage, and dieth seysed of the other. xv. acres, in thys case that other sister shall haue the. xv. acres so descended to her only, and the husband and the wife shal not put in such case the. xv. acres to them gyuen in franke mariage in Hochepot. &c. for this ỳ the tenementes giuen in frãke mariage be of as greate & as good yerely value as the other landes descended. &c. For yf the landes geuen in franke mari-

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age were of as euen value as ỹ remnant Cap. 2.
or of more value, then in dayne and to none entent, such landes geuen in franke mariage, shall be put in Hochpot. &c. for this that she may haue nothyng of the other landes descended. &c. For if she shuld haue any parcell of the other landes descended, then shoulde she haue more in verely value then the sister. &c, which the lawe will not. &c. And as it is sayd in the cases aforesaid of two doughters or two parceners, in the saue maner and in like case is where there be mo sisters, after that as the case and the matter is. &c.

And it is to witte, that landes and tenementes geuen in franke mariage shal not be put in hochpot, but with the lands descended in fee simple, for of landes descended in fee taile, partition shalbe made as if no such gifte in franke mariage had ben made.

Also no landes shalbe put in Hochepot with other, but landes that be geuen in franke mariage al onely. For if any woman haue any other landes or tenementes by an other gifte in the tayle, she shal neuer put such lande so giuen in hochpot &c. but she shal haue her part of the remenaunt descended. &c. that is to saye, as muche as the other parceners shall haue of the same remenant.

Cap. 2. Also an other partition maye be made betwene parceners, that varieth from al the partitions aforesayde, as yf there be. iii. parceners, and the yongest would haue partition, and the other two would not but will holde in percenerye that, that to them belongeth without partition. In this case, yf one part be allotted, in seueraltie to the yongest sister, after that that she ought to haue, thē the other may hold the remenant in parcenerie, & occupye in common without partition, yf they will & suche partition is good inough. And yf after the elder and middle parcener will make partition betwene them of that, ỳ they hold, they may wel do so when they please. But wher partition shalbe made by force of a writte de partitione faciendo. &c. there otherwise it is for there it behoueth ỳ euery parcener haue hys parte in seueralty. &c. More shalbe sayd of parceners in ỳ chapiter of ioyntenātes & also the chapiter of tenantes in cōmon. &c.

Jointenauntes. Cap. iii.

Jointenantes be as yf a man seised of certaine landes or tenementes. &c. and thereof hath enfeoffed two or three, or foure or mo, to haue and to holde to them and to their heires in fee, or to haue & to holde to them for terme of their liues, or for terme of an others lyfe, by force of

whiche

which feoffement or leafe, they be ſealed ſuch be iointenauntes. Cap.31

Alſo if two or .iii. diſſeaſe an other of any landes or tenementes to their owne vſe, then the diſſeiſours be iointenantes. But if they diſſeſe an other to the vſe of one of them, then they be no ioyntenantes, but he to whom the vſe of the diſſeyſin is made, is ſoletenant, and the other haue nothyng in the tenancy, but be called Coaditours to the diſſeiſin, &c.

And note well that diſſeiſin is properly where a man entreth in any landes or tenementes, where his entre is not lawfull and putteth him out, that hath the franke tenement. &c. Diſſeiſin.

And it is to witte that the nature of ioyntenancie is, that he that ſuruiueth ſhall haue onely the whole tenancy after ſuche eſtate as he hath, if the ioynture be continued. &c. And if thre iointenantes be in fee ſimple, and the one hath iſſue and dieth, yet they that ſuruiue ſhall haue the tenementes hole, and the iſſue ſhall haue nothynge, and if the ſeconde ioyntenante haue iſſue and die, yet the third that ſurniueth ſhall haue the tenemsntes whole & he ſhal haue them in fee ſimple to him & to his heires for euer, but otherwiſe it is of perceners. For if .3. parceners be, & before any partition made ỹ one hath iſſue Maxime. Diuerſiti.

Cap. 3. and dieth, that, that to him belõgeth shall descende to his issue. And if suche a parcenner die without issue, then that, that to her belongeth shall discend to her heyres so that they shall haue this by discente, & not by the suruiuour, as ioyntenantes haue. &c. And as the suruiuour holdeth place amonge ioyntenauntes, &c. in the same maner he holdeth place among thẽ that haue ioynte estate, or possession with other of chatell royal, or chatel personal.

As if a lease of landes or tenementes be made to many for terme of yeres, he that suruiueth of the lessees shall haue the tenementes whole to him, duryng ỳ terme by force of the same lease.

And if a horse or other chatell personal be geuen to many, he that suruiueth shall haue the horse to him selfe.

In the same maner it is of dettes and duties, &c. For if an obligation be made to many for one dutie, he that suruiueth shal haue al the det or dutie, and so it is of al other couenauntes and contractes.

And some ioyntenantes may bee, that may haue ioynte estate, and be ioyntenãtes for terme of their liues, and yet they haue seuerall inheritaunces. As if landes be geuen to twoo men, and to the heyres of their two bodies engendred. In this case ỳ dones haue ioynte estate, for terme

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of theyr two lyues, & yet they haue seue- Cap. 2.
rall inheritaunces. For if the one of the doners hath issue, and dieth, the other that suruiueth shall haue all by the suruiuour for terme of his lyfe, & yf he that suruyueth hath also issue and dye, then the issue of the one shall haue the halfe of the lande, and the issue of the other, shall haue the other halfe of the land, and they shall holde the lande betweene theim in commune, and be not iointenantes, but tenauntes in commun.

And the cause that such donees in such case haue iointe estate for terme of theyr liues, is, for this that at the begynnynge landes were geuen to them two, whiche woordes without more sayinge make a ioint estate to thē for terme of their liues.

For if a man will let lande to another by dede or without deede, not makynge mencion what estate he hath, and of this maketh liuery of seisin. In this case the lesse shal haue estate for terme of his life and so, in so muche that the landes were giuen to them, they haue a iointe estate for terme of theyr lyues: and the cause why they haue seuerall inheritaunce, is this, in so much that they can not by possibilitie haue an heyre betweene them ingendred, as a man & a woman may haue &c. then the lawe wyll that theyr estate

Cap. 3. and their inheritance shalbe suche as reason will, after the fourme and effecte of the wordes of the gifte, and that is to the heires that the one engendreth of his bodie, by any of his wiues, and the heyres that the other engendreth of his body by any of his wiues, &c. so it behoueth by necessitie of reason, that they shall haue seuerall inheritaunces. And in suche case if the issue of one of the donees, after the death of the donees, die, so that he hathe no issue aliue of his body engendred, the the donour or his heire may entre in the halfe, as in his reuercion, thoughe the other of the donees hath issue aliue. &c. And the cause is, for so muche that the inheritances be seuered. &c. the reuercion of theim in the lawe is seuered. &c. and the suruiuour of the issue of the other, shall holde no place to haue the whole.

And so as it is sayde of males, in the same maner it is, wher lande is geuen to two females, and to the heyres of theyr two bodies begotten.

Also if landes be giuen to two females and to the heyres of one of them, that is a good ioynture, and the one hath a free holde, and the other hath fee simple, and if she that hath the fee dye, she that hath the freeholde, shall haue the whole, by the suruiuour, for terme of her life.

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In the same maner it is where tene- Cap.3.
ments be giuen to two, and to the heires of the body of one of them engendred, the one hath freholde, and the other fee tayle.

Also if two joyntenauntes be seased of estate of fee simple, & the one graunteth a rent charge by his dede to another, out of ẏ, that to him belōgeth. &c. in this case duringe the life of the grauntour, the rente charge is effectuall. But after his decease the rent charge is voide, as to charge the land, for he ẏ hath the lande by the suruiuour shal hold al the lād discharged. And the cause is for this, ẏ he that suruiueth claymeth to haue the lande by the suruiuour. &c. & not by discente of his felow. &c. But other wise it is of parceners, for yf there be two parceners of tenementes in fee simple, & before any partition made, the one chargeth that, ẏ to him belongeth by his dede of a rent charge. &c. and after dieth without issue ẏ to hym belongeth, descendeth to the other parcener. In thys case the other parcener shal hold the land charged. &c. for thys that he commeth vnto that halfe by discent, as heyre. &c.

Also if there be two joyntenauntes in Deuise.
fee simple within a borough, where the landes and tenementes be deuysable by testamente, yf one of the sayde joyntenantes deuyse that, to hym belongeth

Cap. 3.

by testamente. &c. and dye, thys deuyse is voyde. And the cause is for thys, that no deuise may take effect, but after the death of the deuysour. And for this that by his death al the lande incontinent commeth by the lawe to his felowe, that survyueth by the survyuour, which he claymeth nor hath nothynge in the lande by the deuise but in his owne right by the survyuour after the course of the lawe. &c. for thys cause such deuyse is voyde.

But other wyse it is of parceners seysed of tenementes deuisable in suche case of deuise. &c. Causa qua supra.

Maxime.

Also it is commonly sayde, that euerye ioynte tenaunte is seased of the lande that he holdeth ioyntly. &c. throughe and by all. And this is as muche to saye, that he is seased by euery parcel, and by al. &c. And this is true, for in euery parcell and parte, and by eche parcell, and by all the landes and tenementes, he iointly seased with his felowes. &c.

And yf two ioyntenauntes be seysed of certaine landes in fee simple, and the one letteth that, that to hym belongeth to a stranger for terme of. xl. yere, & dyeth before the terme begin, or within the terme in thys case after the decease, the lessee maye enter and occupie the halfe to hym letten, durynge the terme. &c. though the

lessee

lessee neuer had possession of it in the lyfe of the lessour by force of the same lease. &c. Cap. 3.

And the diuersitye betwene the cause of the graunt of the rent charge aforesaid and this case is this. For in the graunte of a rent charge by a iointenant, the tenauntes abyde alway as thei were afore without that, that anye hath any ryghte to haue any parcel of the tenementes but them selfe, and the same tenementes abide in such plyte as they were before the charge. &c.

But wher a lease is made by a iointenãt to another for terme of yeres. &c. incontinent by force of ỹ lease ỹ lessee hath right in the same land, that is to say, of all that that to his lessour belonged, and to haue that by force of the same lease, durynge hys terme. &c. & this is the diuersitie. &c. Diuersity

Also iointenauntes if they will, maye make partition betwene them, & the partition is good inough, but they shall not be compelled by the lawe to doe it, but if they wyll make partition of their proper wyll and agremente, the partition shall stande in hys strength. 31. E. 4.

Also if a iointe estate be made of lãde to the husbande and the wyfe and to the thyrde person, in thys case the husbande and the wyfe haue not in the lawe in their ryght, but the halfe. &c. and the third

Cap. 3. the third person shal haue as much as the husband and the wife hath, ỳ is to say the other half. &c. And the cause is for that the husbande & the wyfe be but one person in the law, and be in like case as yᵗ estate be made to two ioyntenants, where the one hathe by force of iointure the one halfe, & the other the other halfe.

In the same maner is, where estate is made to the husbande and the wyfe, and to other two men. In suche case the husband and the wife haue not but the third parte, & the other two men the other two partes. &c. causa qua supra. More shall be sayde of the matter, touchynge ioynte tenauncye in the chappter of tenauntes in common, tenaunt par elegit, and tenant by estatute merchaunte.

¶ Tenauntes in common. Cap. iiii.

TEnantes in common be they, that haue landes or tenementes in fee symple, fee tayle, or for terme of lyfe. &c. and those they bee, whyche haue suche landes and tenementes by seuerall tytles, and not by ioynte tytle, and no man knoweth that, that is seueral to him but they oughte by the lawe to occuppe suche landes or tenementes in common, & vndeuyded to take the profites in common. And bycause that they come to

suche

suche landes and tenementes be seuerall titles and not by one selfe ioynte title, their occupation and possession, shalbe by the law among them in common, and be called tenantes in common. Cap.4.

As if a man enfeoffe two ioyntenauntes in fee, and the one of them alyeneth that, that to him belongeth to another in fee, now the other ioynt tenant and the aliene be tenauntes in common, for this that they be seased in such tenementes by seuerall titles, for the alyene commeth in the halfe by the feoffement of the ioynte tenaunt, and the other iointenante hath the other halfe by force of the firste feoffement made to him and to his firste felowe and so they be in by seuerall titles, and by seuerall feoffementes, &c.

And it is to wit, that when it is sayde in any booke, that a man is seased in fee without more saying, it shalbe vnderstãd fee simple, for it shall not be vnderstande by such word in fee, that a man is seased in fee tayle, excepte ỹ there be put thereto such addicion, that is to say fee tayle. Fe simple.

Also if three ioint tenaũtes be, and the one of them alieneth that, that vnto him belongeth, to another manne in fee. In this case the alien is tenante in common with the other two ioyntenauntes. But yet the other two ioyntenantes be seased

of

Cap. 4. of the two parties ioyntely, and of these two partes the suruiuour between them holdeth place. &c.

Also if there be twoo ioyntenauntes in fee, and the one geueth that, that vnto him belongeth to another in the tayle the donee and the other ioyntenaunte be tenauntes in common. &c.

But if the landes be geuen to two men and to the heyres of their two bodies engendred, the dones haue ioynte estate for terme of theyr liues, and yf ethe of them haue issue and die, theyr issues shal holde in common. &c.

But if landes be geuen to two abbots as to the abbot of westminster, and to the abbot of saynt Albones, to haue & to holde to theim and theyr successours, in this case they haue incontinente at the beginnynge estate in common, and not ioynte estate. And the cause is for this, ỳ enery abbot or other soueraigne of an house of religion, before that he be made abbote, or soueraigne, was but a dead man in the lawe. And when he is made abbot he is a man personable in the law, al onely to purchase and to haue landes and tenementes, and other thynges to the vse of his house, and not to his owne proper vse as other seculer men may. And for this in the beginning of their purchase, they be tenan-

tenauntes in common. And if the one of Cap.41
them die, the abbot that suruiueth shall not haue al by the suruiuour, but the successour of the abbot that dieth shall holde the halfe in common with the abbot that suruiueth.

Also if landes be geuen to an abbot and to a seculer man, to haue and to holde to them, that is to say, to the abbot and his successours, and to the seculer mā, to him and to his heires they haue estate in common. Causa qua supra.

Also if landes be gyuen to two men to haue and to holde, that is to wit, the one halfe to the one and to his heires, and the other halfe to the other and to his heires they be tenauntes in common. &c.

Also if a man seased of certaine landes, enfeoffeth an other in ẏ halfe of the same land, without any speche of allinemente, or limittacion of the same halfe in seueralty, of the time of the feoffement, then the feoffee and the feoffour shall holde their partes of the land in common. And in the same maner as is afore sayd of tenantes in cōmon of lādes or tenementes in fee simple or fee tail, in ẏ same maner may it be said of tenātes for terme of life.

Also if two ioyntenantes be in fee, and the one letteth to a man that, that vnto him belongeth for terme of life, and the other

Cap. 4. the other ioyntenante letteth that, that to him belongeth, to an other for terme of life, these two lessees be tenaūtes incommon for terme of their liues, &c.

Also if a man let landes to two men for terme of their liues, & the one graunteth al his estate of that, that vnto him belongeth to an other. &c. then the other tenant for terme of life, & he to whome the graūt is made, be tenantes in common, during the time that both lessees be alyue. &c.

And it is to be remembred, that in all other suche cases though that they be not here expressly named or specified if they be in like reason be in like law.

Also if there be two ioyntenauntes in fee, and ỹ one letteth that, that vnto him belongeth to an other for terme of his life the tenant for terme of life during his life and the other ioyntenant that did not let be tenant in common.

¶ quēstiō. And vpon this case a question may ryse as thus. ¶ Put the case that ỹ lessour hath issue and dieth leuyng that other ioyntenant his felow, and liuing the tenaunte for terme of life, the questiō may be suche if the reuercion of the halfe. &c. that the lessour hath, shall descende to the issue of the lessour or that the other ioyntenante shall haue it by the suruiuour.

And some haue saide in this case that the other

other iointenaunt shall haue the reuercion by the suruiuour, and their reason is such when the iointenantes were iointly seased in fee simple. &c. though ye one of them made estate of that, ye vnto him belongeth for terme of life, and though that he hath seuered franke tenemente of that that to him belongeth, by ye lease, yet he hath not seuered the fee simple, but the fee simple abideth to him ioyntly, as it was before. And so it semeth vnto thē, that the other ioyntenant that suruiueth shall haue the reuercion by the suruiuour. &c. Cap. 4.

And other haue said the contrary, and this is their reason, that is to say, where one of the ioyntenantes letteth that that to him belongeth to an other for terme of his life: that by such lease the franke tenemente is seuered from the ioynture. And by the same reason the reuercion ye is dependaunt vnto the same franktenement is seuered from the ioynture.

Also if the lessoure had reserued to him a yerely rente vpon the lease, the lessour onely shall haue the rente. &c. The whyche is a profe, that the reuercion is onely in hym, and that the other hath nothyng in the reuercion.

Also yf the tenaunte for terme of lyfe wer impleded. &c. & made defaut after defaut, then the lessour shalbe onely of thys

recey-

Cap. 4. receyued to defende his right, and his fe-
lowe in this case in no maner shal be re-
ceyued, whyche proueth that the reuer-
cyon of the halfe is onely in the lessoure.
And so by consequens, yf the lessour die,
liuyng the lessee for terme of lyfe, the re-
uercion shall discende to the heire of the
Inquyre. lessour. &c. and not come to the other ioin-
tenant by the suruiuor. Ideo quere. But
in this case if the ioyntenaunt that hath
the franketenement haue issue and dye,
liuyng the lessour and the lessee, then it
semeth that the issue shall haue the halfe
in hys demesne, as of fee by discent, for
this that the franketenement may not by
nature of ẏ ioynture, be anuered to a re-
uercion. &c. and it is certaine, that he that
Inquyre. leited, was seased of the halfe in hys de-
mesne as of fee, and none shall haue any
iointure in his franke tenement. Ergo
this shal discend to his issues. Sed quere.

But yf it be thus that the lawe in this
case is such, that if the lessour dye liuyng
the lessee, and liuynge the other ioynte-
naunt that hath the franke tenement of
the other halfe, that the reuercion shall
discende to the issue of the lessoure, then
is the ioynture and the title that anye of
them maye haue by the suruiuoure, and
right of the ioynture adnulled and al vt-
terly defeted for euer.

In

In the same maner it is, if the ioyntenant that hath the franketenement dye lyuynge the lessour and the lessee, yf the lawe be suche, that the franketenemente and fee that he hath in the halfe, shal discende to his issue, then the iointure shall be defeted for euer. &c. Cap. i.

Also yf three ioyntenauntes be, and one releaseth by his dede to one of his felowes, all the right that he hathe in the lande, then hath he to whome the release is made, the thirde part of the landes by force of the relese, and he and his felowe shal holde the other two partes ioyntlye. And as to the third parte that he hath by force of the release, he holdeth ẏ third part with him selfe, & his felow in common.

Release.

And it is to wit, that sometime a dede of release shal take effect, & shalbe enure to put the estate of hym that made the release to hym, to whome the release is made, as in the case aforesayde.

And also yf a ioynte estate be made to the husband and his wyfe, and to a third person, and the thirde person releaseth his right that he hath. &c. to the husbande then hath the husbande the halfe that the thyrde personne hadde, and the wyfe of this hathe nothynge. And if in suche case the thyrde release &c. to the wyfe, not namynge the husbande in the release,

Cap. 4.

then hathe the wyfe the halfe that the thirde perſoune hadde, and the huſbande hathe nothynge of thys, but in ryghte of hys wyfe, for thys that in ſuche caſe the releſe ſhal enure to put the eſtate to hym to whome the releaſe is made of all that that belonged to hym that made the releaſe. &c.

And in ſome caſe a releaſe ſhall enure to put al the right that he hath, that made the releaſe, to hym to whome the releaſe is made.

As if a man ſealed of certayne landes and tenementes is diſſeiſed by. ii. diſſeyſours yf the diſſeiſee by hys deede releaſe al his right. &c to one of the diſſeyſours, then he to whom the releaſe is made, ſhal haue & hold al the tenements to him only & put out hys felowe of euery occupation of it. And the cauſe is for thys, that the. ii. diſſeiſours were ſeiſed in the tenementes by wrong by them done againſt the law. And when one of them hath the releaſe of him yͭ hath right to enter. &c. thꝰ right in ſuch caſe reſteth in him, to whome the releaſe is made, and in ſuche plyghte, as yf he that had the ryghte had entred and enfeoffed hym. &c. And the cauſe is for thys that he that had the eſtate by wrong, that is to ſay by diſſeyſin. &c. he hath nowe by the releaſe a rightful eſtate.

yf a man be diſſeiſed

into

Also in suche case a release shall enure by way of extinguishment, and in suche case such release shall helpe the iointenãt to whom the release was not made, as well as him, to whom ỹ release is made. Cap. 4. P. 5. E. 4.

As if a man be disseised, and the disseisour maketh a feoffement to two men in fee, if the disseisee release to one of the feoffees in fee by his deede, then such release shall enure to both the feoffees, for this that the feoffees haue estate by the law, that is to say, by feoffement, and not by wrong done to any other, etc.

And in the same maner it is, if the disseisour make a lease to a man for terme of life, the remainder ouer to an other in fee, if the disseisee release to the tenant for terme of his life all his right. This release enureth as well to him in the remaynder as to the tenaunt for terme of life, & shall ayde and maintain the right of him in ỹ remainder, as wel as the right of the tenant for terme of life, etc.

And the cause is for this, that the tenant for terme of life, cõmeth to his estate by the course of the law. And for this the release shall enure & take effecte by way of extinquishment of the right of him that hath released, etc. And by this release the tenaunt for terme of life hath no greater estate then he had before the lease

Cap. 422. made vnto him, and the right of him that released is all vtterly extincte. And in so much that suche release can not enlarge the estate of the tenāt for terme of life, it is reason that the relese shal enure to him in the remainder, &c. More shall be sayde of releases in the chapiter of releases.

Also if there be two parceners, and the one alieneth that vnto him belongeth to an other, then the other parcener and the alyene be tenantes in common.

Also tenauntes in common may be by title of prescription, if the one & his auncesters, or thet whose estate he hath in the halfe, haue holden in common, the same halfe with the other tenant that hath the other halfe, & with his auncesters or them whose estate he hath, as vndeuided fro time wherof no memory runneth &c. And diuers other maners may make and cause men to be tenants in common that be not here expressed.

Also in some case tenauntes in commō ought to haue their possession seuerall actions, and in some case they shal ioyne in one action. For if there be two tenants in common, and they be dissessed they ought to haue against ye disseisour two assises and not one assise, for euery of them ought to haue an assise of his halfe, &c. And the cause is for this the tenantes in

commō were seased by seuerall titles, but other wise it is of ioyntenaunces. For if there be .ii. ioyntenauntes, and they be dissealed, they shall haue in all they? names but one assise, because that they had but one ioynte title. Cap.4.

Also if there be .iii. ioyntenauntes, and one releaseth to one of his felowes all the right that he hath, and after ỳ other two be dissealed of the hole, &c. In this case the other .ii. shall haue seuerall assyses in this forme, ỳ is to say, they shal haue in bothe their names one assise of the two partes, &c. for this that they held the two partes iointly at ỳ time of ỳ dissesin. And as to the third part, he to whom the release was made ought to haue thereof an assise in his owne name, for this ỳ as to ỳ thyrde parte he is tenaunt in cōmon, &c. for this that he came to that thirde parte by force of the release, and not only by force of the ioynture. Also as to se we actions ỳ toucheth the royaltie, there is diuersitie betwene parceners that be in by diuers discentes and tenauntes in common.

For if a man seased of certain landes in fee haue issue two doughters and die, and they enter, &c. and eche of them hath issue a sonne, and die without partition made betweene them, by whiche the one halfe descendeth to the son of the one parcener &

parceners by diuers discentes dissessed shall haue in their .ii. names one.

Cap. 4.

Assise and not assises

the other halfe descendeth to the sonne of the other parcener, and they enter and occupy in common, and be diffeated, in this case they shal haue in theyr writ two names one assise, and not two assises. And the cause is, that though they come in by diuers discentes &c. yet they be parceners and a writ de participatione facienda lieth betwen them, and they be not parceners hauyng regarde in respect only to the seisin & possession fro their mothers, but they be parceners hauynge more respect to the estate that descended fro theyr graundfather to their mothers, for they may not be parceners where their mother were not parceners before &c.

And so to suche respecte and consyderation, that is to wit, as to the fyrst discent ꝑ was to theyr mothers, they haue a title in parcener, the which maketh them parceners. And also they be put as one heyre to theyr common auncestors, ꝑ is to say, to their graundfather, fro whome the lande descended to their mothers. And for these cases before partition betwen thē. they shuld haue one assise, though they come in by seueral discentes.

Also if there be twoo tenauntes in common of certayne landes in fee, and they gene the same lande to another man in the tayle, or let it to another man for

for terme of lyfe, yeldynge an annuytie Cap. 4.
or certayne rent, and a pound of pepper, or an hauke, or an horse, and they be seased of the seruices, and after all the rente is behynde, and they dystreyne for it, and the tenaunt maketh thē rescons. In that case as to the rent & the pound of pepper, they shall haue two assises, and as to the hauke, and the horse, but one assyse, and the cause why thei haue two assises, as to the rent and pounde of pepper is this, in so muche that they were tenauntes in cōmon by seuerall tytles, and when they made a gift in the tayle, or lease for terme of lyfe. &c. sauynge to them the reuercion and yeldynge to them certayne rente. &c. Suche reuertion is incydente to theyr reuercyon.

And for this that theyr reuercion is in common, and by seuerall tytles, as theyr possessiō was before theyr rent and other thynges, that maye be seuered and were to thē reserued vpon the gyft, or vppon the lease, whiche be incydente by the lawe to the reuercion, such thinges so reserued was of the nature of the reuerciō, which reuercion is to them in cōmon by seuerall tytles. And it behoueth, that the rent of the pounde of pepper, which may be seuered, be to thē in commō by seuerall

Cap. 4. titles. And of this they shall haue two assises, and euery of them in his assise, shall make hys plainte of the halfe of the rente, and of the halfe of the pounde of pepper, &c. But of the hauke and the horse, which can not be seuered, they shal haue but one assyse, for a man may not make a plainte in assyse of the halfe of an hauke, or of the halfe of an horse, &c. In the same maner it is of other rentes and seruices, that tenauntes in common haue in grosse by diuers titles.

Also as to actions personals, tenauntes in common ought to haue suche actions personals ioyntlye all theyr names, that is to saye, of trespasse, or of offences that touche theyr tenementes in common. As of breakyng of theyr houses, breakyng of theyr closures, and pastures, wastynge, and defoulynge of theyr grasse, cuttyng of theyr woode, and to fyshe in theyr pondes, and suche other. In thys case tenauntes in common shall haue one action ioyntlye, and recouer ioyntlye damages, bycause that the action is in the personaltye, and not in the realtye.

Also yf two tenauntes in comon make a lease of their tenementes to another for terme of yeares, yeldynge vnto them yerely a certayne rente duryng the terme, yf the rente be behynde, &c. the tenauntes

in

in common shal haue one action of dette against the lessee, and not diuers actions, for that the actyon is in the personaltie. But in auoury for the sayde rente, they ought to ioyner, for that is in the realtye, as the assise is aboue. Cap. 4. Auoury.

Also tenauntes in common may make partition betweene the if they wil, though they shall not be compelled by the lawe. But if they make partition betweene them by theyr agreement and assent, such partition is good ynough, as it is adiudged in the boke of assise. 19. E. 4. Particio ex cõsensu.

Also as there be tenauntes in common of landes or tenementes. &c. as is afore sayd. In the same maner there be possessions and properties of chatell reall, and chatell personal. As yf a lease be made of certayne landes to two men for terme of xx. yeres, and when they be therof possessed, the one of the lessees graunteth that that vnto hym belongeth, during the terme to another, then he to whome the graunt is made, and the other shal holde and occupie in common. Tenaunt in commõ of cattell.

Also yf two ioyntenauntes haue the warde of the bodye, and of the landes of the chylde, within age, and that one of them graunteth to another that, that vnto him belongeth of the same warde, then the graunte is the other that graunteth

Cap. 4. not, shal haue and holde it in commō. &c.

In the same maner it is of chatels personals, as yf two haue a ioynte estate by gyfte, or by byeng of an horse, or an oxe. &c. and the one grauteth that, that to hym belongeth to another. Then the grauntee and he that graunted not, shall haue and possesse suche chatels personalles in common. &c. And in such cases where dyuers parsons haue chatels reals or personals in cōmon, & by diuers titles, yf the one of them dye, the other that suruyueth, shall not haue that by the suruyuour. But the executoures of him that dyeth, shal holde and occupy that with him that suruiueth as their testatour did or ought in his life. &c. for this that theyr tytles and ryght in this case were seuerall.

Also in this case aforesayd, if two haue estate in common for terme of yeres, and the one occupye all, and put the other out of hys possession and occupation, then he that is put out of occupation, shall haue agaynste that other a writte de electione firme, of the halfe agaynst the other.

In the same maner it is, where two holde the warde of landes or tenementes durynge the nonage of a chylde, yf one put oute the other of hys possessyon, he that is out shall haue a writ de eiectment de garde, of the halfe for thys that those

thynges

thinges be chatels reals, and may be apporcioned and seuered. &c. But no such actiō of trespas, that is to say. Quare clausum suum fregit, & herbam tuam conculcauit & consumpsit. &c. And suche like actions the one may not haue agaynst the other, for this that ech of them may enter and occupy in common, &c. through and by all the landes and tenementes, which they holde in common. But if two be possessed of chatelles parsonels, in common by diuers titles: as of an horse, or an oxe, or a cowe, if the one take it all to him selfe out of the possession of the other, the other hath none other remedy, but to take this of him, that hath done to him the wronge for to occupie in common, when he may see his time. Cap. 4.

In the same maner it is of chatell reall that may not be seuered, as in case aforesaid, that two be possessyoners of a ward of the body of a chylde within age, if one take the childe out of the possession of the other, the other hath no remedy by any action by the lawe, but to take the chylde out of the others possession when he seeth his time. &c.

Also when a man in pleadynge, wyll shew a dede of feoffement made vnto him or a gifte in the tayle, or a lease for terme of lyfe, of any landes or tenementes, the fourm of pleadig

there

Cap. 4. there he shall say, by force of which feoffement, gift or lease, he was seased, &c. But

Diuersiti. where a mā wil pleade a lease or a grant made vnto him of chatel real or personal ther he shal say, perforce of which he was possessed. More shalbe said of tenantes in common in the chapter of releases confirmacions, and tenauntes per elegit.

¶ Estates vpon condicion. Cap. v.

Estates that men haue in landes or tenementes be in two maners. That is to say, they haue estate vpon condicion in dede, or vpon condicion in law. Vpon condicion in deed, is where a man by deede indented enfeoffeth another in fee reseruyng to him & to his heyres yerely a certaine rente payable at one feaste, or at dyuers feastes by yere vpon condicion, ẏ if the rent be behinde, &c. ẏ it shalble lefull to the feoffour & to his heires to enter into the landes or tenementes. &c. Or if the lande be alyened to another in fee, to yelde vnto him certaine rente, And if it happe that the rente be behinde by a weeke after any day of payment of it, or by a moneth, or by ẏ halfe yere, after any day of payment, that then it shalbe lefull to the feoffour, and to his heyres to enter, &c. In this case if the rente be not payde at suche a time, or before suche a time lymitted and specified within the con-

condicion comprysed in the endenture, then may the feoffour or his heyres entre into suche landes or tenementes, and then in his first estate to haue and to hold and of this to put the feoffe cleane oute, and it is called estate vpon condicion, for this that the estate of the feoffe, is defelible, if the condicion be not perfourmed. Cap. 5.

In the same maner it is, if landes be geuen to a man in the tayle, or let for terme of lyfe, or for terme of yeres, vpon suche condicion, &c. But where a feoffemente is made of certaine landes reseruyng certaine rente vpon such condicion that if the rente be behinde, that it shalbe lefull to the feoffour and his heires to entre in the lande till he be satisfied or paide of the rent behinde. &c. In this case if the rent be behinde, and the feoffour and his heyres entre, the feoffee is not excluded cleane out. But the feoffour shall haue and holde the lande and take the profites till that he be satisfied of the rente behind. And when he is satisfied, then the feoffee may reenter in the same lande and holde it as he did before, for in suche case ẏ feoffour shall haue it but in maner as for a distresse in the meane time till he be satisfied of the rent, &c. thoughe he take the profites in the meane time to his owne vse.

Also

Cap. 5.

Upon a condicion.

Also diuers wordes amonge other there be, that by vertue of the selfe make estate vpon condicion. One is this worde vpon condicion, as if D. enfeoffeth B. of certaine landes to haue and to holde to the same B. and his heires vpon condicion that the same D and his heyres shall pay or do to be payde to the forsayd D. and to his heires yerely such a rente, &c. In this case without any more sayinge the feoffee hath estate vpon condicion, &c.

Also if the condicion were suche prouided alway that the forsaid B. pay or doo to be paide to the forsayde D. such a rent. Or if they were thus, so that the forsayd B. pay or doo to be paide to the forsayde D. such rent. In these cases without any more sayinge the feoffee hath not estate but vpon condicion, so that if he performe not the condicion, the feffour and his heires may enter, &c.

Prouiso.

Also other wordes there be in a deede that causeth the tenantes to be condicionels, as vpon such a feoffement a rente is reserued to the feffour, &c. and after it is put in the deede, that if it chaunce the forsayde rent to be behinde in parte or in al. &c. that then it shalbe lawfull to the feoffour and to his heires to enter. And this is a deede vpon condicion.

But there is diuersitie betweene these wordes

wordes if it chaunce. &c. and the wordes nexte aforesayde. For this worde. If it chaunce. &c. is nought worthy to such condicion, but if it haue these wordes folowyng, that is to saye that it shalbe lefull to the feoffoure & his heyres to enter. &c. Cap. 5.

But in these cases aforesayd, it needeth not by the lawe, to put suche clause, that is to say that the feoffour and his heires may enter. &c. for this that they maye so do by force of the wordes aforesayde, bycause they conceyue in them selfe in the lawe a condicion, that is to saye that the feoffour and his heires may enter, yet it is commonly in all such cases aforesayd, to put suche clauses in the deedes, that is to saye if the rente be behynde. &c. that it shalbe lefull to the same feoffour and his heyres to enter. &c. And this is well done to the entent for to declare and expresse to the laye men, that be not learned in the lawe the maner and the condicion of the feoffement. &c. Conditio implicita.

As if a man seised of land, as of franke tenement, let the same lande to another by deede indented for terme of xx. yeares yelding vnto him certaine rent, it is vsed to put in the deede, that if the rente be behinde at the daye of paymente by a weke or a moneth. &c. that then it shall be lefull to the lessoure, to distrayne. &c. and yet

the

Cap. 5. the lessour maye distrayne of common right for the rent behinde. &c. though such wordes neuer were put in the deede. &c.

Also if any feoffemente be made to a man vpon such codicion, that yf the feoffour pay to the feoffee at a certayne daye &c. xx. li. of money, that then the feoffour may reenter. &c. In thys case the feoffee is called tenaunt in morgage, that is as much to say in french as mortegage and in latine mortuum vaduum, and in Englishe a dede pledge.

Pignus mortuum. And it semeth that the cause why it is called morgage is, for that that it standeth in doubte, yf the feoffour will pay at the daye limitted suche a summe or not, and yf he paye not, then the lande that is put in pledge vpō condicion for the payment of the money, is gone from him for euer. And so dede to him vpon a condiciō and yf he paye the money, then is the pledge deade as to the tenaunt. &c.

Also as if a man make a feoffement in fee in morgage, so may a man make a gifte of the tayle in morgage, and a lease for terme of lyfe, or for terme of yeres in morgage, and all suche tenauntes be called tenantes in morgage, after the state that they haue in the landes. &c.

Also if a feoffement be made in morgage, vpon condicion, that the feoffour shall

shal paye such a summe at such a daye. &c. Cap. 5.
as it is bet weene them by their deede inde-
ted, acknowledged, and limitted, though the le-
ssour dye before the day of payment. &c.
yet if the heire of ỳ feoffour pay the same
summe of money at the day to the feoffee
or procter vpon the money, and the feoffee
refuseth to receyue it, then may the heyre
enter into the landes. And yet the condyc-
tion is, if the lessour paye suche a summe
at such a day. &c. and not making mencio
in the condicio of any paymẽt to be made
by hys heyre. But for this, that the heyre
hath interest or right in the condicion. &c.
ỳ entent was but ỳ the money should
be payed at the day set. &c. and the feoffee
hath no more damage, yf he be payde by ỳ
heyre, then though he were payed by the
father. &c. And for this cause yf the heyre
pay the money, or tendreth the money at
the daye set. &c. and the other refuseth it,
he maye wel enter. But yf a straunger of
hys owne heade, that hath no interest. &c.
wold tender and paye the money to the fe-
offee, at the day set, then the feoffee is not
bounde to receyue it. &c.

And it is to be had in mynde, that in
suche case where suche tender of
the money is made, and the feoffee refu-
seth to receyue it, wherefore the feoffoure
or his heires do enter. &c. thẽ ỳ feoffee hath

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no remedye to haue the money by the co-
mon lawe, for this that it shalbe arrected
hys owne folly, that he refused the mony
when lawfull profer was made of it vn-
to hym. &c.

Also if a feoffement be made in suche
condicion, that if the feoffee pay to the fe-
offour at such a day betwene them limit-
ted. xx. li. that then the feoffee shall haue
the lande to him and to his heyres, and yf
he fayle to pay the mony at the day assel-
led. &c. ỳ then it shalbe lawfull to the fe-
offoure or to hys heyres to enter. &c. and
after before the daye set, the feoffee selleth
the lande to an other, and thereof maketh
a feoffement to him, in this case if the se-
conde feoffee will tende the somme of mo-
ney at the day set to the feoffour, & the fe-
offour refuseth &c. then hath the second
feoffee estate in the lande clerely without
condicion. And the cause is for that the se-
cond feoffee had interest in the condicion
for saluacion of his tenancye. And in this
case it semeth, that the firste feoffee after
such sale of the land will tende the money
at the day set for the seconde feoffee to the
feoffour, ỳ shall be good ynough for the
saluacion of the estate of the second feoffee
for this that the firste feoffee was priuye
to the condicion, and so the tender of any
of them both is good inough. &c.

In what time tender shall be.

Also

Also if the feoffemente be made vppon condicion, that if the feoffour paye a certayne sum of money to the feoffee, that then it shalbe lawfull to the feoffour & to his heires to entre. &c. In this case if the feoffour die before the day of paymente and the heyre will tender to the feoffee the money, such tender is voyde, for this that the time within whiche the tender ought to be made, is paste. For when the condicion is, that if the feoffour pay the money to the feoffee, this is as muche to say, that if the feoffour durynge his lyfe pay the money to the feoffee &c. And whē the feoffour dieth, then the time of ỹ tender is past. But otherwise it is where a day of paiment is limitted to the feoffour and he dieth before the day, then may the heire tender the money, as it is aforesaid for this that the time of the tender was not past by the death of the feoffour. Lay. 5.

¶ Also it semeth in suche case, where the feoffour dieth before the day of payment if the executours of the feoffour tender ỹ money to the feoffee at the day of payement, the tender is good inough. And if the feoffee refuse this, the heire of the feoffour may enter. &c. And the cause is for this that the executours represente the person of their testatour. &c.

And note well that in all suche cases of

Cap. 5. condition of payment of certaine summe in grosse, touching landes or tenementes lawfull tender be ones refesed he ẏ ought to pay the money is thereof assoyled and clerely discharged for euer after.

Also if the feoffee in morgage before the day of payment that shall be made vnto him, make his executours and die, and his heire entreth in the land as he ought: It seemeth in this case that the feoffour ought to pay the money at the day set to the executours, and not to the heire of the feoffe, for this that the money at the beginning belonged co the feoffee in maner as a dutie. And shall be vnderstande that that estate was made, because of borowyng of ẏ money of the feoffee, or because of an other dutie. And for this the payment shall not be made vnto the heyre of the feoffee as it seemeth. But the wordes of the condicion may be suche that ẏ payment shalbe made vnto ẏ heire, as if the condicion were that the feoffour pay to the feoffe or to his heires suche a summe of money at such a day. &c. Ther after the death of the feoffee if he die before the day limitted, paymente ought to be made to the heire at the day set.

Wher tẽder shalbe made. ¶ Also in suche a case of a feoffemente in morgage a question hath bene demaunded, in what place ẏ feoffour is bound to ten-

tender the money to the feoffee at the day set. &c. And some haue sayde that vpon the lande so holden in mortgage, for this that the condicion is dependant vpon the lawe and they haue said, that if the feoffour be readie vpon the lande to pay the money to the feoffee at the day set, and the feoffee be not at that time there, that then the feoffour is excluded & discharged of payment of the sayd money, for this, that no defaute was in him. But it seemeth to some men, that the lawe is contrary and that defaut is in him. For he is bounde to seke the feoffee, if he be then at any tyme in any maner of place within the realme of England. As if a man be bounde in an obligacion of. xx. pounde vpon condicion indosed vppon the obligacion, that if he pay to him to whome the obligacion is made at suche a day. x.li. that then the obligacion of. xx.li. shall lose his force, and shalbe holden for nought, in this case it behoueth him that made the obligacion to seeke him to whom the obligacion is made if he be within Englande, and at the day set, to render to him the sayde x.li. &c. And other wyse he forfayteth the summe of. xx.li. comprised within the obligacion and so it seemeth in the other. &c. And though that some haue sayde, that the condicion is dependant vpon the land Cap. 53

Cap. 5. yet this is not proued, that the lesaunce of the condicion to be perfourmed ought to be made vpon the land. &c. no more the if the condicion were, that the feoffour should do at such a day. &c. an especial corporall seruice to the feoffee not nampyng the place where the corporall seruyces should be done. In this case the feoffour ought to do suche corporall seruice at the day limitte the feoffee, in what so euer place of Englande that the feoffee be, if he will haue aduauntage of the condicion &c. And so it seemeth in that other case. And it seemeth to them ỳ it shalbe more properly sayd, that the estate of the lande is dependaunt vppon the condicion, &c. whiche is as muche to say, that the condicion is dependant vpon the lande, &c. but enquire. &c.

But if a feoffement in fee be made reseruyng to the feoffour an annuell rente and for defaute of payment a reentre. &c. this case it needeth not to the tenãt to tender the rent when it is behind, but onely vpon the lande, for this ỳ this is a rente going out of the land which is rent secke. For if the feoffour be ones seased of this rent, & after he commeth vpon the lande, &c. & the rẽt is denied him, &c. he may haue assise of nouel disseisin, for thoughe he may enter because of ỳ condicion broken

yet

yet he maye chose, that is to saye, to enter Cap. 5.
or to haue an assise. And so is there diuersitie, as to the tender of the rente, that is goyng out of the lande, and of the tender of an other summe in grosse, whyche is not goyng out of any lande. And therfore it shall be sure and a good thynge for them that will make suche feoffement in morgage, to put and set a speciall place, where the money shal be payed. And the more spectall that it is put, the better it is for the feoffour. &c.

As yf. A. enfeoffee. B. to haue to hym and to his heyres vppon suche condycion that if A. pay to B. in the feaste of saincte Myghel tharchangel nexte commynge in the cathedrall church of sayncte Paule of London, within foure houres next before the houre of noone, of the same feaste, at ỹ mode lofte of the northe dore within the same church, or at the tombe of saint Erkenwalde, or at suthe a chapel dore, or at such a pilloure within the same churche, that then it shal be lefull to the forsayd. A and to his heires to enter. &c. In such case it nedeth not to seke the feoffee in any other place compryfed in the endenture nor to be there more lenger time thē the time specified in the same indenture, for to tender, or pay the money to the feoffee. &c.

Also in suche case where the place of

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payment is limit, the feoffee is not bounde to receiue the paymẽt in none other place but in the place so limitted. But yet if he receyue the payment in any other place, this is good inoughe, and as strounge for the feoffoure, as yf the receyte had be in the same place so lymitted. &c.

Satisfaction.

Also in this case of feoffement in mortgage yf the feoffoure paye to the feoffee, an horse or a cuppe of siluer or a ryngge of golde or anye other suche thynge in full satysfaction of the money, and the other this receyueth, this is good inoughe, and as strong as yf he had receyued y summe of money, though the horse, or any of the other thynges be not the twentie parte worthe in value of the summe of money for this that the other hath accepted it in playne and full satisfaction.

Also yf a man enfeoffes another in fee vppon condicion, that he and hys heyres shall yelde to a straunger and to his heires a yerely rente of twenty shyllynges, and yf he and his heyres fayle of payment of this, that then it shalbe lawfull to the feoffour and to hys heires to enter, this is a good condycyon. And yet in thys case though such a yerely rent be called an annuel rent, this is not properly a rent, for if it shalbe rent, it ought to be rent seruice rent charge, or rent secke, & yet it is none

of

of them for if the stranger were seased of thys, and after it were to him denied, he shall neuer haue assyse of this, for this ẏ it issueth not out of any lãdes. And so the straunger hath no remedye, if any suche yearely rent be behinde in this case, but that the feoffour and his heires maye entre. &c. & yet yf the feoffoure or his heyres entre for defaute of payment, then suche rente is gone for euer. And so suche rente is but a payemente sette to the tenaunte and to hys heires, that yf he wil not paye this after the fourme of the indenture, that they shall lese theyr lande by the entrie of the feoffoure, or hys heyres for defaute of paymente. And in this case it semeth, that the feoffee & hys heyres ought to seke the straunger and hys heyres, yf they be in England, bicause that no place is lymitted where the paymente shall be made and bycause that suche rente is not goyng out of any lande. &c.

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And here note well two thynges: One is that no rente that is properlye sayde rente maye be reserued vpon any feoffeemente, gyfte or lease, but onely to the feoffour donour lessour, or to their heyres, and in no maner it may be reserued to anye straunge person.

But if two iointenauntes make a lese by dede indented, reseruynge to the one

Cap. 5. of them a certain yerely rent that is good ynough to hym, to whom the rente is reserued, for this that he is pryuye to the lease and not a straunger thereto. &c.

Maxime. The seconde thinge is, that no entre or reentre which is al one, may be reserued nor giuen to any person, but onely to the feoffour, or to the donour, or to the lessour or to their heires, and such entre may not be alieued nor graunted to any person.

For if a man let landes to another for terme of lyfe by endenture, yeldynge to the lessoure and to hys heyres a certayne rent, and for defaut of payment a reentre &c. if after the lessour by a dede graunt the reuercyon of the lande to another in fee and the tenaunte for terme of life attourneth &c. yf the rente after be behynde, the grauntee of the reuercion may distrayne for the rent, for this y the rent is incident to the reuercion, but he maye not enter into the lande, and put out the tenant for the condition broke, as the lessour might or his heires, if the reuercion had ben continued in them. &c. for in this case the entre is taken away at al times for the graunt of the reuercion may not entre, causa qua supra. And the lessour nor his heires may not entre, for yf the lessoure maye entre then he ought to be in his first estate. &c. and that maye not be for this that he

hath

hath aliened from him the reuercion. &c. Cap. 51

Also if there be lorde and tenante and the tenaunte make a lease for terme of lyfe yeldynge to the lessoure and to his heyres such a yerely rent, and for defaute of paimeut a reentree. &c. if after the lessor die without heire duryng the state of the tenaunt for terme of lyfe, by whiche the reuercion commeth to the lorde by waye of eschete, and after the rent of the tenant for terme of life is behinde, the lorde may distrayne the tenant for the rent behynd, but he may not entre into the lande by force of the condicion. &c. for this that he is not heyre to the fessour. &c.

Also if lande be graunted to a man for terme of two yeres, vpon a condicion ẏ if he pay the grauntour within the sayd twoo yeares forty markes, that then he shal haue the lande to him & to his heires &c. In this case if the grauntee entre by force of the graunt without any liuery of seisin, made to him by the grauntour, & after he payeth to the grauntour the. xl. markes within. ii. yeres yet he hath nothyng in the lande but for terme of twoo yeres, for this ẏ no liuery of seisin was to him made at the beginninge for if he had franktenement & fee, in this case because he hath parfourmed the condicion, then shuld he haue franktenement byforce of

the

Lay. 54 the firſt graunt, where no liuery of ſeiſin was made therof which ſhuld be againſt reaſon.&c. But if the grauntour had made liuery of ſeiſin to the grauntee by force of the graunte, then hath the grauntee the franketenemēt and the fee vpon the ſame condicion.&c.

Alſo if lande be graunted to a man for terme of .v. yeres, vpon condicion, that if he pay to the grauntour within the firſte two yeres fortie markes, that thē he ſhal haue fee or els but for terme of the fyue yeres, and liuery of ſeiſin is made to him by force of the graunt. Now he hath fee ſimple condicionall.&c. And if in this caſe the grauntee pay not to the grauntour the.xl. markes within the ſame two firſt yeres, then immediatly after the ſame .ii. yeres the fee and the franketenemente is and ſhalbe adiudged in the grauntour, for this that the grauntour may not after the layde two yeres incontinente enter vpon the grauntee, for this that the grauntee hath yet title by three yeares, to haue and to occupie the lande by force of the ſame graunte. And ſo for this that the condicīō of parte of the graunte is broken, and the grauntour may not enter, the la we ſhall put the fee and the franke tenemente in the grauntour. For if the grauntee in this caſe make waſte, then after the breaking

of ỹ condition. &c. and after the two yeres, the grauntour shall haue his writte of walke, and this is a good proufe, that the reuercion is in him. &c. But in suche case of feoffement vpon condition where the feoffour may enter lawfully for the condicion broken, &c. there the feoffour hath the seanke tenement before the entre. &c. Cap. 51.

Also if a feoffement be made vpon such condicion, that the feoffes shall giue the lande to the feoffour, and to the wife of the feoffour, to haue and to hold to theim and to the heires of their bodies engendred and for defaute of suche issue to remaine to the right heyres of the feoffour. In this case if the husbande die, the wife liuing before estate in the tayle made to them then ought the feoffee by the lawe to make estate to the wyfe as lyke to the condicion and as lyke to the entente of the condicion as he may make it, that is to say, to let the lande to the wyfe for terme of lyfe without empechemente of waste, that remaynder after her decease to the heyres engendred of the body of her husbande and hers, and for defaute of suche issue the remaynder to the ryghte heyres of the husband. And the cause why that lease shall be made, in this case to the woman sole without empechemente of waste, is for this that the condicion is;

that

Cap. 5. that the estate shall be made to the husbande, and to his wife in the tayle. And if suche estate had be made in the life of the husbande, then after the death of her husbande, she had had estate in the tayle, whiche estate is without empechmente of waste, and so it is reason, that if after a man may make estate to the entente of the condition. &c. that he shall make. &c.

Though she can not haue estate in the tayle, as she might haue had if the gifte in the tayle hau be made to the husbande and to her, in the lyke of her husband. &c.

Also in this case if the husbande and the wyfe haue issue, and die before the gifte in the tayle made vnto them. &c. Then ought the feoffee to make estate to the issue and to the heyres of the bodye of the father and the mother engendred, and for defaute of suche issue. &c. the remaynder to the ryght heyres of the husbande. &c.

And the same law is in other cases semblable. And if suche a feffee will not make such estate when he is reasonably required by the that ought to haue estate by force of the condition. &c. then maye the feoffer or his heyres entre. &c.

Also if a feoffement be made vppon condition that the feoffee shall enfeoffe many men to haue and to holde to them

and

and to his heires for euer, and all they that ought to haue estate dye before anye estate made vnto them, then ought the feoffee to make the estate to the heyre of him that suruiueth of theym, to haue and to holde to hym and the heyres of hym that suruiueth. &c. Cap. 5.

Also if a feoffement be made vpon condicion to enfeoffee an other or to giue in the tayle to an other, yf the feoffee before the parfourmynge of the condicion enfeoffee a straunge person, or make a lease for terme of lyfe, then may the feoffour or his heyres entre. &c. for this that he hath disabled hym selfe to perfourme the condicion, in so muche that he made estate to an other. &c.

In the same maner it is, if the feoffee before the condicion perfourmed, lette the same lande to a straunger for terme of yeares. In thys case the feoffour or his heire maye enter. &c. for this that the feoffee hath disabled him selfe to make estate of the tenementes according to that that was in the tenementes, when estate thereof was made vnto hym, for yf he wil make estate accordynge to the condicion. &c. then maye the lessee for terme of yeres entre, & put out him to whome the estate is made. &c. to occupy this duryng

his

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hys terme. And many haue sayde, that yf suche a feoffement be made to a mā sole, vpon the same condicion and before that he hath performed the condicion, he taketh a wyfe, then the feoffour or his heire may incontinent enter, for this that if he hath made estate, according to the condicion, and after openly, his wife shal be endowed, and may recouer her dower by a writ of dower. &c. And so by takyng of a wyfe the tenementes be put in another plyte, then they were at the tyme of the feoffement vpon condicion, for this that then no such woman was dowable, nor should be endowed by the lawe. &c.

In the same maner it is, yf the feoffer charge the lād by his dede of trust charge before the performyng of condicion, or be bounde in statute Staple, or statute marchant, in suche cases the feoffour and his heyres maye enter. Causa qua supra. For whosoeuer cōmeth to the tenements by the feoffement of the feoffee, then the tenementes maye be liable, and be put in execution by force of the statute marchaunt, or of the statute staple, quere, but when the feoffoure or hys heyres, for the cases aforesayde haue entred, so as they ought as it semeth. &c. Then all such thinges that before suche entre might trouble or encombre the tenementes so giuen vpon

pon condiciō. &c. as touching the same te- Cap. 5.
nemēts be vtterly defeted by their entre.

Also if a man make a dede of feoffemēt to another, and in the dede is no condicion. &c. And when the feoffour wyll make to hym lyuerye of seysin by force of the same dede, he maketh to hym lyuerye of seisin vpon certaine condicions. In thys case nothynge of the tenementes passeth by the dede, for thys that the condicion is not comprysed in the dede, and the feoffement is of such force, as yf no such dede had bene made therof. &c.

Also yf a feoffemente be made vppon suche condicion, that the feoffee shall not aliene the lande to no man, this condiciō is voyde, for this that when a man is enfeoffed in landes or tenementes, he hath power to aliene them to some person by the lawe, for if suche condicion should be good, then the condicion putteth the feoffee out of all the power, that the lawe giueth which should be against reason, and for this suche condicion is voyde. But yf the condicion be such, that the feoffee shal not alyen to one such, naminge his name or to anye of hys heyres, or the issues of suche one. &c. or suche other lyke condicions taketh not away al the power of alienacion of the feoffee. &c. then such condicion is good.

Cap. 5. Also if tenites be giuen in the taile vpō such condicion, ẏ the tenaunt in the tayle nor his heires. &c. shal not alien in fee nor in tayle, nor for terme of others life, but for theyr owne liues. &c. suche condicion is good. And the cause is for thys, that when he maketh such alienacion & discontinuaunce of the tayle, he doth cōtrary to the entente of the donoure, for whiche the statute of westminster the second. capi. 1. was made, by which estatute the estates in the tayle be ordeyned, for it is proued by the wordes cōprysed in the same estatute, that the entent of the makyng of the same estatute was, that the wyll of the donour in such cases should be obserued. And when tenant in ẏ taile maketh suche discontinuaunce, he doth the contrary to that. &c. And also in estates in the tayle of any tenementes, when the reuercyon of the fee simple is in the donoure yf that he giue not the remaynder ouer, or after the gifte graunteth the reuercion to another person when suche discontinuaunce is made, then the fee simple of the donour is in the reuercion, or of him in the remainder is discontinued, and for thys that the tenāt in the taile shal do no such thynge agaynste the profite of hys issues and good ryghte, suche condicion is good as it is aforesayde. &c.

Also

Also a man may geve lande in fee tayle vpon suche condicion, ỳ if the tenante in the tayle, or his heyres, alene in fee or tayle, in or for terme of anothers life, &c. And also ỳ if all the issues commynge of the tenante in the tayle be dead without issue, ỳ then it shalbe lefull to the donour, and to his heyres to enter, &c. And by such way the right of the tayle may be saued after suche discontinuance to the issue in the tayle, if there be any, so ỳ by waye of entre of the donour, or of his heyres, the tayle shall not be defeted by suche condicion. Quere de hoc. Cap. 5.

And yet if the tenante in the tayle in this case, or his heyres make any discontinuaunce. &c. De in the reuercion or his heyres, after that the tayle is determyned for the defaute of issue. &c. maye enter into the lande by force of the same condicion, and shall not bee driuen to sew a writte of Formedone in the reuercion. &c.

Also a man may not pleade in anye action, that estate was made in fee or in the tayle, or for terme of life vpon condicion, but if he vouche a recorde therof or shewe a writynge vnder seale, prouyng the same condicion, for it is a common erudicion, and learning that a man by pleadyng shall not defete any estate of

Cap. 5. frankētenement by force of any such condicion, but if he shew the proufe of suche condicion in writyng. &c. excepte it be in some especiall cause, but of chatels reals, as of a leale made for terme of yeres or of grauntes of wardes made by wardeins in chyualrie, and of suche other, &c. A man may plede that suche giftes or grauntes were made vpon condicion. &c. without shewyng of any writyng of condicion. And in the same maner a man may do of giftes and grauntes of chatels personals and of contractes personals, &c.

Also though that a man in some actions may not pleade a condicion that toucheth and concerneth franktenement without shewyng of writing therof as it is afore sayd, yet a mā may be holpen vpon such condicion, by the verdite of twelue men taken at large, in assise of Nouel disseysin, or in some other action, wher ỹ iustices will take the verdit of the twelue iurours at large.

As put the case that a man seised of certayne lande in fee, letteth the same lande to a man for terme of lyfe without deede vpon condicion to yelde to the lessour a certayne rent, and for defaut of payment a reentre, &c. by force of whiche leale, the lessee is seased as of franktenemente and after the rent is behynde, by whiche the lessour

lessour entreth into the lande, and after Cap. 5.
the lessee arraineth an assise of nouel dis-
seisin of the lande against the lessour the
which pleadeth that he doth no wrong ne
no disseisin, and vppon this the assise is
taken. In this case the recognitours of
the assise may say and yelde to the Justi-
ces theyr verdite at large vpon al ẏ mat-
ter, as to say, that the defendant was se-
sed of the lande in his demesne, as of fee,
& so seased, let the same land to the plain-
tife for terme of his lyfe, yeldynge to the
lessour such an annuell rente payable at
such a feast. &c. and vpon such a condicion
that if the rente be behinde at any suche
feast, that it ought to be paied, that then
it shalbe lefull to the lessour to enter. &c.
by force of which lease the playntife was
seased in his demesne as of franketene-
ment, and after that the rent was behind
at such a feast in such a yere. &c. for which
the lessour entred into the lande vpon the
possession of the lessee and praieth the dis-
crecion of the Justices, if this be a disseis-
sin done to the playntife or not. And ẏ for
this that it appeareth to the Justices,
that this was no disseisin done vnto the
playntife. In so muche that the entre of
the lessour was lawfull vpon him the iu-
stices ought to giue ludgement that the
playntife shall take nothyng by his writ

Cap. 5. of assise. And so in suche case the lessour shalbe holpen, and yet was their neuer writynge made of the condicion, for the iurours may in this case haue knowlege of the condicion, that was declared and rehersed vpon the lease made.

In the same manner it is, of a feoffement in fee, or a gifte in the tayle vpon condicion, though neuer writynge were made therof, &c. And as it is sayde of a verdite at large in assise, &c. in the same maner it is in a writte of entre founded vpon disseisin, and in all other actions where the iustices wyll take the verdite at large, there where the verdite at large is made the maner of the entre, entre is put in the issue.

Also in suche case where the enqueste may saye their verdite at large, if they wyll take vpon them the knowledge of the law vpon the matter, they may say theyr verdite generally, as it is put in theyr charge, as in ẏ case aforesayde they may wel say that the lessour disseised not the lessee if they will, &c.

Also in the same case, if the case were suche, that after this, that the lessour had entred for defaut of payment, &c. that the lessee had entred vpō the lessour, and him disseysed, in this case if the lessour arrayned an assyse agaynste the lessee,

the

the lessee may barre him of hys assise, for Cap. 5.
he may pleade against him in barre how the lessour that is plaintyfe made a lease to the defendaunt for terme of his life, saynge the reuercion of the plaintyfe, the which is a good plee in barre in so much that he knowledgeth the reuercion to be to the plaintife, and in this case the plaintife hath no matter to helpe him, but the condicion made vpon the lease, and that he may not plede, for that he hath no writyng of it, & in so muche that he maye not aunswere to the barre, he shalbe barred. And so in this case ye may se, that a man is disseysed, and yet shal he haue no assise And further if the lessee be plaintyfe, and the lessour defendaunt he shall barre the lessee by verdite of the assyse. &c. But in this case where the lessee is defendaunt if he wyl not plede the sayd plee in barre, but pleade no wrong nor disseysin, then the lessoure shal recouer by assise. Causa qua supra.

Also bycause such condicions be moste commonly put and specified in deedes indented, some littel thing shal be sayd here to thee my sonne of endentures, and of a dede poll conteinyng condicions.

And it is to witte, that if the Indenture be by pertite, or tripartite, or quadri

Cap. 5.

partite, all the partes and the Indenture be but one dede in the lawe, & euery parte of the Indenture is of hym selfe of as great force and effect as all the partes together. And the making of indentures is in two maners. One is to make thē in ỹ third person, an other maner is to make them in the first person. The makyng in the thirde person is, as in such fourme.

Hec indentura facta inter R. de P. ex vna parte, et T. de D. ex altera part. testatur quod predictus. R. de P. dedit et concessit et hac presenti carta indentata confirmauit prefato T. de D. talem terram. &c. habend. et tenend. sub condicione. &c. in cuius rei testimonium partes predicte sigilla sua alternatim apposuerūt. Vel sic. In cuius rei testimonium vni parti huius indenture penes prefatum. T. de D. remanentur predictus R. de P. sigillum suum apposuit. Alteri parte eiusdem Indenture penes R. de P. remanentur. Idem T. de D. sigillum suum apposuit. Data. &c. Thys indenture made betwene R. of P. of the one parte, and T. of D. of the other, witnesseth that the foresayde. R. of P. hath giuen and graunted, and by thys presente deede indented, hath confirmed to the foresayde T. of D. suche lande to haue. &c. vpon the condicion. &c. In witnesse whereof the parties

The fourme of an indenture in the third person.

before

before sayde interchaungeably, haue put Cap. 5.
to theyr seales, or els thus in witnesse
wherof to one parte of this indenture re-
mayning with the sayd. W. of D. the fore-
sayd R. of P. hath put to his seale, and to
the other parte of the sayde indenture re-
mayning with the sayd R. of P. the sayd
W. of D. hath put to his seale geuen. &c.

Suche indenture is called indenture
made in the third personne, for this that
the verbes. &c. be in the third person, and
suche forme of indentures is more sure
makynge, for thys that it is more com-
monly vsed. The makynge of indentures
in the firste personne is in suche forme.
Omnibus christifidelibus ad quos pre-
sentes littere indentate peruenerint A.
de B. salutem in domino sempiternam.
Sciatis me dedisse concessisse, et hac pre-
senti carta mea indentata confirmasse L.
de D. talem terram. &c. Vel sic. Sciant
presentes et futuri, quod ego. A. de. B. de-
di concessi et hac presenti carta mea in-
dentata confirmaui L. de. D. talem ter-
ram. &c. habendum & tenendum sub con-
dicione sequenti. &c. In cuius rei testimo-
monium tam ego predicti. A. de B. q̄ pre-
dictus L. de D. his indenturis sigilla no-
stra alterum apposuimus. Vel sic. In cu-
ius rei testimonium ego prefatus A. vni
parti, huius indenture sigillū meū appo-

Cap. 5. sui alteri vero parti eiusdē indenture p̄dictus. C. de. D. sigillum suū apposuit. ꝛc.

In indenture in the firste person. To all true christen people, to whome this p̄sent writyng endented shal come A. of. B. gretyng in our lorde euerlastyng know ye me to haue giuen and graunted and by this my p̄sente dede indented to haue confirmed to. C. of. D. such lande. ꝛc. Or els thus. Knowe all men ỹ be p̄sent and them that be to come, that J. A. of. B. haue gyuen and graūted, and by this my p̄sente dede indented, haue confyrmed to. C. of. D. suche lande. ꝛc. to haue. ꝛc. vpon condicion folowynge. In witnesse whereof, as well J the sayde. A of. B. as the forsayd. C. of. D. to these indentures interchaungeably haue put to our seales or elles thus. In witnesse whersof J the forsayd A. of. B. to one part of this indēture haue put to my seale, ꝛ to the other parte of the same indenture the forsayd C. of. D. hath put to hys seale. ꝛc.

And it semeth that such an endenture made in the firste person, is as good in the law as the endenture made in the thirde person, when bothe parties haue thereto put theyr seales, for if in ỹ indēture made in the thirde persone or in the firste person if mencion be made, that the grauntoure hathe sette his seale onlye, and the grauntee not then in the indenture only

the

the deede of the grauntour. But where mention is made, that the grauntee hath set his seale to the endenture. &c. then is the endenture as well the deede of the grauntee as the deede of the grauntour. And thus it is the deede of bothe, and also euery parte of the endenture is the deede of both partes in such cases. &c. Cap. 5.

Also if estate be made by endenture to a man for terme of his lyfe, the remainder to another in fee vpon certayne condicion. &c. And if a tenant for terme of lyfe hath set his seale to the parte of the endenture, and after dieth, and he in the remaynder, &c. entreth in the lande by force of his remaynder. In this case he is holden to performe all the condicions comprised within the indenture, as the tenaunt for terme of lyfe ought to doo in his lyfe, and yet he in the remaynder neuer sealed any parcell of the endenture, but the cause is, that in so muche that he entreth and agreeth to haue the land by force of the endenture, he is holden to performe the condicion within the endenture if he will haue the lande.

Also if a feoffement be made by deede poll vpon condicion. &c. and for this that the condicion is not performed, the feoffour entreth and hath the possessiō of the deede pol, if the feoffee bring an action of

that

Cap. 5. that entre agaynst the feoffour, it hathe ben questioned, if the feoffour may plede the condicion, &c. by ẏ deede polle against the feoffee. And some haue sayde nay, in so muche that it seemeth vnto them, that a dead poll, and the property of the same deede apperteyneth to him to whom the deede is made, and not to him that made the deede. And in so much that such a dede apperteineth not to ẏ feoffour, it seemeth to them ẏ he may not pleade his deede. &c.

The pleadyng of a condicion by a dede poll.

And other haue sayde the contrary, and haue shewed diuers causes. One is if the case be suche, that in the action between them, if the feoffee pleade the same deede, and shew this to the courte: In this case in somuch that the deede is in the court, ẏ feoffour may shew to the courte, howe in the deede, by diuers condicions to be perfourmed of the part of the feoffee and for this that they be not perfourmed he entred. &c. and thereto shall be receyued by the same reason when the feoffoure hath the deede in hande, and sheweth it to the courte, he shall be well receyued to pleade of this, &c. And namely whē the feoffour is priuy in the deede, for he ought to be priuie to the deede, when he made the deede.

Also if two men make or do a trespasse to another, the whiche releaseth to one

of

of them by his deede al actions personels Lay. 5.
&c. Notwithstandyng he sueth an action of trespas agaynst the other then the defendant may well shew, that the trespas was done by him and another his felow and that the playntife by the deede that he sheweth forth released to his felow all actions personelles, and yet suche deede apperteyneth to his felowe, and not to him, but for this that he maye haue aduantage by the deede, if he may shew the deede to the courte, he may well pleade therefore. By the same reason in the other case, when the feoffour ought to haue aduantage by the condition comprised within the dede poll.

Also if the feoffee gaue or graunted the deede poll to the feoffour, such graunt shalbe good, and then the deede and the property of the deede appertetneth to the feoffour. And when the feoffour hath the deede in hande, and pleadeth it to ỹ court, it shalbe rather taken, that he came to the dede by a lawfull meane, then by a tortious meane, and so it seemeth, that they may well pleade suche a deede poll, that comprehendeth condition. &c.

If ye haue the deede in hande. &c. Ideo seper quere de dubiis, quia per rationes peruenitur ad legittimam rationem.

Estates that men haue vpon condicion

in

Cap. 5. Estate vpon condicio in law.

in the law be such, that haue a condicion by the law annexed to them, though it be not specified in wrytynge, as if a man graunt by his deede to another, the office of a parkship of a parke, to haue and to occupie the same office for terme of his life, the estate that he hath in the office is vpon condicion in the lawe, that is to say, ỹ the partaker wel & truly shall kepe the parke, and doo this that to his office apperteineth to do, or otherwyse that it shalbe lefful to the grauntour & his heyres to put him out, and to graunt that to an other if he will. &c. and suche condicion as is vnderstande by the law to be annexed to any thing is as strong, as if the condicion were set or put in wrytyng.

In the same maner it is of grauntes of offices of stewardes, constables, bedyls, bayliffes, and other offices, but if suche offices be graunted to a man to haue & to occupie by him or by his deputie, as he ought by the law, then if the office be occupied by him or his deputie, as it ought by the lawe to be occupied, this suffyseth for him, or els the grauntour or his heires may put him out, as it is afore sayde.

Also estates of landes or tenementes may be vpon condicion in the law though that vpon the estate made there was no reherfall made of the condicions: As

put

pute the case that a lease be made to the husband & his wife to haue and to hold to them during the couerture betwene thē in this case they haue estate for terme of their two liues, vpō condicīō in law ẏ is to saye, if one of them die, or if deuorce be made betwene them, ẏ then it shalbe lefull to the lessour & his heyres, to entre &c. ẏ thei haue estate for terme of their two liues, it is proued thus euery man ẏ hath estate or frankstenement in any landes or tenementes, eyther he hath estate in fee, or in fee tayle, or for terme of lyfe, or for terme of his owne lyfe, or for terme of an others life, & by such lease they haue frāk-tenement. But thei haue not by the graūt fee, nor for tayle, nor for terme of an others life. Ergo thei haue estate for terme of theyr two liues, but this is vpon cōdi-cion in the law in forme aforesaid. And in this case if they make waste, the lessor shal haue against them a writ of waste suppo-sing by his writ. Quod tenent ad termi-nū vite. &c. But in his plee he shal declare how & in what maner ẏ lease was made. Cap. 5.

A generall writ and a speciall declaratiō

In the same maner it is ẏ if an abbot make a lease to a man to haue & to holde to hym durynge the tyme that the lessour is abbot. In this case the lesses hath estate for terme of the lyfe of the same abbotte but thys is vppon condycyon in lawe

that

Cap. 5. that is to saye, that yf the abbot resygne or be deposed, that it shall be lefull to hys successours to entre. &c.

Also a man maye see in the boke of assyse. An. 38. E. 3 a plee in assyse in thys forme that ensueth. Assyse of nouel disseisin was sometime brought agaynste one, B. that pleaded to the assise and was founde by verdit, that the ancestor of the playntife demysed the tenementes to be solde by his executour, to make distribucion of the money for hys soule, & it was founde that incontinent after the death of the testatoure, a man tendred to hym a certaine sum of money for the tenementes, but not to the value, & that the executour after held the tenemets in his owne hande by two yere, to the entent to haue solde the tenementes the more deerer to some other, and it was found that he had all thys whyle after taken the profittes of the tenementes to hys owne vse, without any thyng doyng for the soule of the deade. Wombraye iustice sayde. The executoure in suche case is holden by the lawe to make the sale as sone as he may after the death of the testatour, and it is founde ỳ he refused to make the sale, and so the defaut was in him, & also by force of the deuise, he was holden to put all the profytes of the sayde tenementes to the

dedes

bedes vse, & it is founde that he hathe taken them to his owne vse and so another defaute is in hym, wherefore it was adiudged that the plaintife should recouer. And thus it appereth by the sayde iudgement that by force of the sayd deuise, that the executour had no estate nor power in the tenementes but vppon condycion in the lawe. And many other cases there be of estates vpon condicion in the lawe & in suche cases it nedeth not to haue shewed any deede rehersinge the condicion. &c. for that the law in it selfe pourporteth the condicion. &c. Ex paucis dietis intendere plurima possis. Cap. 6.

More shall be sayde of condicions in the nexte chapiter, in the chapiter of releses, and also in the chapiter of dyscontinuance.

Discentes. Cap. vi.

Discentes that take away entres be in two maners, ẏ is to saye where the discent is in fee, or in fee tayle. Discentes in fee that take away entrees be where a man seased of certaine landes or tenementes is by another disseased, and the disseisour hath issue, and dieth of such estate seased, nowe the tenementes descende to the issue of the disseysour by course of the lawe as heyre vnto hym.

And for this that the lawe putteth the

Cap. 6. landes or tenementes vpon the issue, and the issue commeth to the tenementes by course of the lawe and not by hys awne dede, the entre of the disseysin is taken away, and is thereof putte to sue hys writ of entre vpon disseysin against the heyre of the disseysour to recouer the lande.

Discentes in the taile, that take away entrees be where a man is disseysed, and the disseysour geueth the same land to an other in the tayle, and the tenaunt in the tayle hath issue and dieth seased of suche estate, and the issue entreth, in thys case the entre of the disseisee is taken away and he is put to sue against the issue of the tenaunte in the tayle, a writte of entre vpon disseysin. &c.

Discentes in the tayle.

And note wel, that in suche discentes that take away entres it behoueth that a man dye seased in his demesne as in fee, or in his demesne, as in fee tayle, for dieng seased for terme of lyfe, or for terme of an others life, shal neuer take away entre. &c.

Also a discente of reuersion or of remaynder shal neuer take away entre. As if a man disseyse me, and the disseisee letteth the tenementes to a man for terme of lyfe, the remaynder in fee, yf he in the remaynder haue issue and die, and after the tenaunt for terme of lyfe dieth, the issue of hym in the remaynder entreth. In

thys

this case the entre of the disseisee is not ta- Cap. 6.
ken away, so ỳ in such cases, that take a-
way entres by force of discentes: it behoo-
eth ỳ he that dieth seysed haue fee and
franketenement, or fee tayle and franke-
tenement at the time of his dying, or els
such discent taketh not away entre.

Also as it is sayd of discentes that dys-
cende to the issue of them that die seased
&c, ỳ same law is, where they haue none
issue, but the tenementes descende to the
brother syster, uncle, or some other cosin
of him that dieth seased. &c.

Also if there be lorde & tenant, and the
tenant be disseysed, and the disseisour ali-
eneth to an other in fee, & the alyen dieth
without heyre, and the lorde entreth as
in his eschete. In this case ỳ disseyse may
enter vppon the lorde, for this that the
lorde commeth not to the lande by discent
but by way of eschete. M. 9. H. 9. 7.

Also if a man seased of certayne lande
in fee, or in fee tayle vpon condicion to
yelde certayne rent, or vpon other condi-
cion, though that such tenaunt seysed in
fee, or in fee tayle die seased, yet if the cō-
dicion be broken in their lyues, or after
their decesse, &c. this taketh not away the
entre of the feoffour, nor of the donour or
of theyr heyres, for this that the tenancie
is charged with the condicion, and

Cap. 6

the estate of the tenancy is condicional by whose hands soeuer the tenancy cometh.

Also if suche a tenant vpon condicion be disseysed, and the disseysour die therof seysed: the lande descendeth to the heyre of the disseisour, now the entre of the tenant vpon condicion ỹ was disseised is taken away, but yet if ỹ condicion be broken, &c. then may the feoffour or the donour ỹ made the estate vpon condicion, or their heyres enter. &c. Causa qua supra.

Also if a disseysour die seysed, and his heyres enter. &c. the which endoweth the wife of the disseysour of the thyrde parte of the tenementes in this case as to the thirde part that is assigned to the wife in dower, incontinent after that the wyfe entreth, & hath the possession of the same thirde parte, the disseisee may lawfully enter vpon ỹ possession of the wife in the same third part. And the cause is for this that when the wife hath her dower, she shalbe adiudged in possessiõ immediatly by her husband, and not by the heyre and so as to the franktenemente of the same thirde parte, the discent is defeted.

And thus ye may se, that before the dowement the disseysee myght not enter in any parte. &c. and after the dowement, he may enter vpon the wife and yet he may not entre vpon the other two

parties

parties, that the heyre of the disseysour hath by discent. &c. Lay. 6.

Also if a woman be seased of landes in fee, whereof I haue right and title to entre, if the woman take an husbande and haue issue between them, & after the wife dieth seased, and after that the husbande dieth and ỳ issue entreth. &c. In this case I may enter vpon the possession of the issue, for this that the issue commeth not to the tenementes immediatly by discent after the death of his mother, but by the death of his father. &c. Contra. 19. H. 7 39. H.

Also if a disseisour enfeoffe his father in fee, and the father entreth and dieth of suche estate seased, by whiche the tenementes discend to the disseisour as to the sonne and heire, &c. In this case the disseser may well enter vpon the disseysoure, notwithstandyng the discente, for this ỳ as to the disseisin the disseisour shalbe adiudged in but as disseysour, not withstandynge the discente. Quia participes criminis. &c.

Also if a man seased of certayne landes in fee, hath issue two sonnes, and dieth seased, and the yonger sonne entreth by abbatement in the lande, the whiche hath issue, and of this dieth seased, and the tenementes discende to the issue, and the issue entreth into the lande. in this case This case is iudged. 4. of E. 4. in the. 35. leafe.

Cap. 6. the elder ſon or his heyre may enter by the law vpon the iſſue of ỹ yonger ſonne, notwithſtanding the diſcent, for this that when the yonger ſon abated in the lande after the death of his father before any entre of the elder made, there the law entendeth ỹ he entred in the lande and claimyng it as heyre vnto his father, and for this that the elder brother claymed by ỹ ſame title, ỹ is to ſaye, as heire vnto his father, he & his heires may enter vpon ỹ iſſue of the yonger brother, notwithſtandyng the diſcent. &c. for this ỹ they claime by one ſelfe title. And in the ſame maner it ſhalbe, if there be many diſcentes from one iſſue to an other iſſue of the yonger ſon, &c. But in ſuch caſe if ỹ father were ſeaſed of certaine landes in fee, and hath iſſue two ſonnes and dieth, and the elder ſonne entreth and is ſeaſed. &c. And after the yonger brother diſſeaſeth him, by which diſſeiſin he is ſeaſed in fee, & hathe iſſue, & of ſuch eſtate dieth ſeiſed, then the elder brother may not enter, but is put to his writte of entree vpon diſſeiſin for to recouer the land. And the cauſe is for this that the yonger brother commeth to the tenementes by a wrong diſſeiſin made vnto his elder brother. And for that wrõg the law may not take it, that he clayme as heyre to his father, no more then a ſtraunge

straunge person that had disseised the el- Cap. 6.
der brother, that neuer had any title. &c.

And so may ye see the diuersitie where the ponger brother entreth after the death of hys father before anye entre made by the elder brother in such case. &c. & where the elder brother entreth after the death of his father, and after is disseysed by the ponger brother. &c. In the same maner it is if a man seased of certaine lande in fee, hath issue two doughters, and dyeth, and the elder doughter entreth in the lande claymyng all the lande to her, and therof onlye taketh the profites, and hath issue, and dieth seased by whiche her issue entreth, which issue hath issue and dieth seased, and the second issue entreth. Et sic vltra. Yet the ponger doughter or her issue, as to the halfe maye enter vpon euery issue of the elder doughter not withstandynge suche discente, for thys that they claime by one selfe title. &c. But in suche case if both two sisters come into the lāde to enter, after the death of their father and thereof were seased, & after the elder sister thereof disseased the ponger sister of that that to her belongeth, and thereof is seased in fee and hathe issue, and of suche estate dyeth seased, by whyche the tenementes discende to the issue of the elder syster, then the ponger syster nor her

Cap. 6. heyres may enter. &c. Causa qua supra.

Also yf a man seased of certayne lande in fee, hath issue two sonnes, and the elder brother is bastarde, and the yonger brother mulier and the father dieth, and the bastard entreth and claimeth as heire vnto hys father, and occupieth the lande al his life, without any entre made vpon him by the mulyer, and the bastarde hath issue, and dieth of such estate seased in fee and the lande descendeth to hys issue, and his issue entreth. &c. In this case ỹ mulier is without remedy, for he may not enter nor haue any actiõ for to recouer the lãde for this that there is an auncient law in suche case vsed. &c. But it hathe ben an opinion of some men, that thys shalbe vnderstand where the father hath a sonne a bastarde by a woman, and after he wedeth the same woman, & after ỹ spousayl he hath issue by the same woman a son or a doughter mulier, & after the father dieth &c. Yf suche a bastarde enter. &c. & hathe issue, and dieth seased. &c. then shal the issue of such a bastard haue the lande clerely to him as it is aforesayd. &c. And not any other bastarde borne of the mother ỹ was not espoused to hȳ father. And thȳ semeth a good and reasonable opinion. For such a bastarde borne before the espousels solemnised betwene his father and his mother

ther by the lawe of holye churche, is mu- Ley.6.
lyer, though that by the lawe of the lande he is a bastard borne, & so he hath coloure of entre as heire to hys father, for this ỹ he is by one lawe mulier, that is to saye, by the lawe of holye churche. But otherwyse it is of a bastarde, that hath no maner of colour to enter as heire in so much ỹ he may not by no lawe be sayde mulier &c. for such a bastard is sayde. Quasi nullius filij. But in the case aforesayd, wher the bastard entreth after the death of hys father, and the mulier putteth hym oute & after the bastarde disseaseth the mulier and hath issue, and dyeth seased, and the issue entreth, then the mulier may haue a writ of entre vpō disseisin agaynst the issue of the bastarde, & recouer the land. &c. And so maye ye see the diuersitye, where suche a bastard continueth hys possession al his life without any interruption, and where the mulier entreth and interrupteth the possession of such a bastard. &c.

Also yf a chylde within age haue tytle or cause to enter into any landes or tenementes vppon another, that is seysee in fee, or in fee tayle of the same lāde or tenementes, yf suche a man that is so seased, dye of such estate seased, & the lāde descende to hys issue durynge the tyme that the chylde is within age, such discent

Cap. 6. shal not tolle the entre of the childe but ẏ he may entre vpon the issue, that is in by discent. &c for this ẏ no laches shalbe adiudged in a child win age in such case. &c.

Also if the husbande and hys wyfe as in right of the wyfe haue title and righte to entre in the tenementes, that another hath in fee or in fee tayle, & suche a tenant dyeth seysed. &c. In suche case the entre of the husbande is taken awaye vpon the heire that is in by discent. But yf the husbande die, then the wife maye well enter vppon the issue whiche is in by discente, for this that the laches of the husbād shall not turne the wife and her heyres to preiudice nor damage, in such case, but that the wife and her heires maye well enter vpon such heyre, which is in possession of the tenauncy by discente. And this shalbe vnderstande of a tytle of entree, whyche falleth duryng the couerture.

But the courte holde. P. 9. H. 7. where suche a tytle is geuen to a woman foole whiche after taketh a husband, which entreth not but suffereth a discent. &c. there it is other wise: for it shal be sayde, it was the womans foly to take such a husbande that entred not in time. &c.

Also yf a manne that is not of whole mind, that is to say in latyn, Qui non est cōpos mētis, hath cause to enter into any

suche

such tenementes, if suche discente, vt su- Cap. 6.
pra, he had in his lyke durynge the tyme that he was out of his mynde, and after dieth, his heyre may wel enter vpon him that is in by discente.

And in this case ye may se, that the heyre may enter and yet his aūcestor that had the same title may not entre, for he that was out of his minde, at the time of such discent, if he wyll enter after suche a discente, if action vpon this be shewed agaynst him, he hath nothynge for him to pleade or to helpe him, but to say, that he was out of his minde at the tyme of such discente. &c. And he shal not be receiued to say this, for this that no man of full age shalbe receiued in any plee by the law or falsifie, or disable his owne person but the heyre may well disable the person of his auncestor, for his owne aduantage in suche case, for this that no lackes may be adiudged by the law, in him that hath no discretion in such case.

And if such a man out of his minde make a feoffemēt. &c. he may not enter ne haue a writ called Dum non fuit compos mēntis, &c. causa qua sup. But after his death his heir may wel enter or haue the same writ Dum non fuit compos mentis, at his election. The same lawe is, where a childe, within age maketh a feoffemente

and

Cap. 6. and dieth, his heyres may enter or haue a writ of Dum fuit infra etatem. &c.

C. 12. E. Also if I be diſſeaſed by a chylde within age, that alieneth to another in fee and the aliene dieth ſeaſed, and the tenemenſtes deſcende to his heyre, the childe beyng within age, mine entre is taken away. But if the childe within age entre vpon the heyre that is in by diſcent, as he well may, for this ỳ the ſame diſcent was duryng his nonage, then I may well enter vpon the diſſeiſour, for this ỳ by his entre he hath deſeted and adnulled the diſcent.

And in the ſame maner it is, where I am ſeiſed, and the diſſeiſour maketh a feoffement in fee vpon condicion. &c. and the feoffee dieth of ſuch eſtate ſeyſed, &c. I may not entre vpō the heire of the feoffe. But if the condicion be broken, ſo that by ſuch cauſe ỳ feoffour entreth vpon ỳ heire now may I wel enter for this that when the feoffour or his heyres entred for the condicion broken ỳ diſcent is vtterly deſeted. And if I be diſſeyſed, & the diſſeiſour hath iſſue, and entreth into religion by force wherof the landes deſcended to his iſſue, in this caſe I may well enter vpon the iſſue, and yet there was a diſcent. But for this that ſuch diſcente commeth to the iſſue by the fathers deede, that is to ſay, for this that he entred into relygion

&c.

ec. And the diſcente commeth not to him by the acte of God, that is to ſay by death ec. myne entre is coungeable and lawful for if I arrayne aſſyſe of nouell diſſeyſin againſt my diſſeyſour, though that he after entreth into religion, this ſhall not abate my writte. But my writte this notwithſtandyng, ſhall abyde in his force & ſtrength, and my recouery agaynſt him ſhall be good. And by the ſame reaſon, the diſcente that came to his iſſue by his owne deede may not put me from myne entre. ec. Cap. 6.

Alſo if I let vnto a man certayne lāde for terme of twentie yeres, and an other diſſeyſeth me, and putteth out ỹ ſeruour, and dieth ſeyſed, and the tenementes deſcende to his heyre. I may not entre, and yet the leſſee for terme of yeres may wel entre, for this that by his entre he putteth not out the heyre that is in by diſcente fro the franke tenement that vnto him deſcended. But onely to haue the tenementes for terme of yeres, the which is no expulſyng of the franketenementes of the heyre that is in by diſcente. But otherwiſe it is where my. tenaunte for terme of lyfe is diſſeyſed. ec. Cauſa qua ſupra.

Alſo it is ſayde, that yf a man ſeaſed of tenementes in fee by occupacion in time

of

Cap. 7 of warre, and dieth therof seased in time of warre, and the tenementes discende to his heyre, suche discente putteth no man out of his entre. And this a man may see in a plee on a writ de apel. an. 7. E. 2.

Also no dyeng seased where all the tenementes commeth to an other by succession, shal take away the entre of anye person, &c. as of prelates, abbottes, priours, deanes, or persons of churches, or other body politike. &c. though that there were twentie dyenges seased, & twentie successions, this putteth no man from his entre, for this is not properly called discent. &c. More shalbe said of discentes in the next capiter.

Continual clayme. Ca. viii.

Continuall claime is where a man hath right and title to entre into any landes or tenementes, wherof an other is seased in fee, or in fee tayle, if he that hath title to entre, make continuall clayme to the landes and tenementes before the dyeng seysed of him that holdeth the tenementes, then though suche a tenant die therof seised, and the landes and tenementes discend to his heyre yet may he that hathe made suche clayme or his heyres enter into the landes & tenementes so discended, because of ỳ con-

tinuall

tinual clayme made, notwithstandynge Cap. 7.
such discente.

As in case a man be disseysed, and the disseysee maketh continual claime to the tenementes in the lyfe of the disseysoure, though the disseysoure dye seased in fee, and the lande descendeth vnto hys heyre, yet may the disseysee enter vpon the possession of the heyre not withstandynge such discent.

In the same maner it is, yf tenaunt for terme of lyfe alene in fee, he in the reuercion or he in the remaynder maye enter vppon the alienee. And yf suche alyene dye seased of suche estate, without continuall clayme made to the tenementes, before the dyeng seased of the alienee, and the tenementes bycause of the dying seysed of the aliene descende vnto his heyre. Then may not he in the reuercion nor he in the remainder enter. But yf he in the reuercion, or he in the remainder that hath cause to enter vppo the alienee, made continuall clayme to the tenementes, before the dieng seased of the alience, then suche a man maye enter after the death of the aliene, as wel as he myght in his lyfe.

Also if landes be let vnto a mā for terme of his life, the remainder vnto an other for terme of life, & remainder to ỳ third man

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Cap. 7. in fee, if the tenãt for terme of lyfe alieneth in fee, and he in the remainder for terme of life maketh continual claime vnto the lande before the dyeng sealed of the alyenee, & after the alyenee dyeth sealed. &c. and after he in the remaynder for terme of life dieth before any entre made by hi.

In this case he in the remaynder in fee maye entre vpon the heyre of the alienee bicause of continual claime made by him that had the remaynder for terme of hys life, for this that suche right that he hath to enter, shall go and remayne to hym in the remaynder after hym, in so muche that he in the remainder in fee, may not enter vpon the alienee in fee durynge the life of him in the remainder for terme of life & bicause ỹ he might not then make continual claim, for none may make continual claim but whe he hath title to enter, &c. But it is to see to ỹ my childe, how & in what maner such continuall claime shalbe made, and this to learne wel, the thinges there be to be vnderstande.

In what wise claim ought to be made.

The first thing is, if a man haue cause to enter in any landes or tenementes in diuers townes within one shire, if he enter in any parcel of ỹ landes or tenementes, that be in one towne in the name of al the landes or tenementes into whiche he hath right to enter with all the townes

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in ẏ same shire, by suche entre he hath Cap. 7.
as good possessiō & seisin of such lādes or tenementes wherof he hath title to enter, as if he had entred in dede into euery parcel, & this semeth great treason. For if a mā will enfeoffe an other without dede of certayn lādes or tenementes that he hath in many townes within one shire, & he will deliuer seisin to ẏ feoffee of parcel of ẏ tenementes within one towne in ẏ name of al the lādes or tenemētes that he hath in the same towne, & in al the other townes. &c. al the sayd tenemētes. &c. shall passe by force of ẏ sayd liuery of seysin to him to whom such feoffemēt in such maner is made: And yet he to whome such liuery of seisin is made, hathe no right to al ẏ lādes & tenemētes in al ẏ downes, but bicause of ẏ lyuery of seisin made of parcel of the lāds or tenemēts in one towne. A multo fortiori. it semeth good reason, ẏ when a man hath title to entre into landes or tenementes in diuers townes, within one shire, before any entre by hī made ẏ by ẏ entre of him made in parcel of ẏ tenemēts in one towne, in ẏ name of al the landes & tenementes, to the which he hath title to enter within the same

Cap. 7. thire thꝰ a seisin of al in him, and by such entre he hath possession and seisin in dede as if he had entred into euery parcel. &c.

The seconde thing is to vnderstande ꝑ if a mā haue title to entre into any lādes or tenementes, if he dare not entre in the same landes or tenementes, nor in anye parcel thereof for doubte of beating or for doubt of mayming, or for doubt of death, if he goe & approche as nigh the tenemēts as he dare for such doubte as is aforsaid, and clayme by worde the tenementes to be his, incontinēt by such clayme he hath a possession and seisin in the tenements, as wel as if he had entred in dede though he hadde neuer possession or seisin of the same landes or tenemētes before the sayd clayme. And that the lawe is suche, it is well proued by a plee of an assise in the boke of assise. An. 38. Edwarde. 3. the tenour of which ensueth in this fourme. In the countye of Dorset before the Justices, it was founde by verdite of assyse that the plaintife, which had right by discent of heritage, to haue the tenementes put in plaint at the time of ỹ death of his ancestor which was dwelling in ỹ town where the tenements were, & by wordes clayned the tenemētes amōg his neighbours but for doubt of death, he durst not approche vnto the tenementes, but bring-

geth

geth assise, and vpon the matter found it was awarded, that he should recouer. &c The third thing is to vnderstand within what time the claime, that is sayd continuall clayme, shall serue and helpe him that maketh the clayme and his heyres. And as to this it is to wit, ỳ he that hath title to entre whē he wil make his claim if he dare approche vnto the land, then it behoueth him to go vnto the lande, or to parcell of it, and make his claime, and if he dare not approche vnto the lande for doubt or dread of beating, maiminge or death, then it behoueth him to go & to approch as nie as he dare toward the lande or percell therof & make his claime. And if his aduersarie that occupieth the lande dieth, seased in fee, or in fee tayle, within a yere and a day after such claime made, by which the tenementes descende vnto his son as heire vnto him, yet may he ỳ made the clayme enter vpon the possessiō of the heire, &c. But in this case after the yere & the day ỳ such clayme was made, if none other claime be made, if ỳ father then die seased, the morow after the yere and the day, or at another day after, &c. then may not he ỳ made ỳ claime enter. And therefore if he that made the clayme will be sure alwai, that his entre shal not be takē away by such discent, it behoueth Cap. 7.

Cap. 7. him, that he within a yere and the daye after the firste clayme made to make another clayme in the forme aforesayd. And within the yere and the day after the second claime made, to make ẏ third clayme in the same maner, and within the yere & the day after the third claime to make an other clayme, and so forthe that is to say, to make an other clayme within euery yere & day next after euery clayme made duryng the lyfe of his aduersarie, and then at what time that his aduersarie dieth seased, his entre shal not be take away by no such discent. And such clayme made in suche maner is most commonly taken and called continual claim of him that made the claime. But yet in case aforesaid where his aduersary dieth within the yere and the day next after the firste clayme this is in the lawe a continuall claime, in so muche ẏ his aduersary dieth within the yere & the day after the same claime, for it is no neede for him ẏ made the claime to make an other claime, but at the time ẏ he will within ẏ same yere and the day. &c. And if his aduersary be disseysed within the yere and the day after the claime, & the disseisour dieth therof seased, within the yere and the day. &c. This dieng seased shall not hurt him that made the claime, but ẏ he may entre. &c.

For

For whosoeuer he be, that dieth seased within ẏ yere & the day after such claime ẏ shall not hurt him ẏ made the clayme, but that he may enter though there were many dienges seased, and many discētes within the yere and the day.&c.nota hoc. Cap.7.

Also if a man be disseysed, and the disseysour dieth seysed within the yere and the day nexte after the disseysin made, wherby the tenementes descende to his heyre in this case the entre of the desseysee is taken away, for the yeare and the day that shuld helpe the disseisee in such case.&c.shall not be taken from the tyme of the title of entre growē vnto him, but only from the time of the clayme by him made in time aforesayde. And for ẏ cause it shall be good for such a disseysee, for to make his clayme.&c.in as shorte time as he may after the disseisin.&c.

Also if suche a disseysour occupie the lande by forty yeres or mo without any clayme made by the disseisee.&c. and the disseysee by littell space before the death of the disseisour, make a claim in ẏ forme aforesayde, if it so fortune that within a yere & a day after suche claime the disseysour disseysed.&c. then the entree of the disseysie is coungeable. And for this it shalbe good for such a man that made no claim that hath title to enter.&c. when he

Cap. 7. hereth that his aduersary lieth sicke, to make his clayme. &c. as it is saide in the cases put before, where a man hath title to enter because of a disseysin. &c. The same law is, where a man hath right to enter because of any other title. &c.

Also in this saide presidentes may ye know my child. ii. thinges. One is where a man hath title to enter vpon a tenaunt in tayle, if he make any suche clayme to the lande, &c. Then is the state of the tayle defeated, for that clayme is as an entre made by him, and is of the same effect in the law, as if he were vpon the same tenementes, and had entred in the same tenementes as is aforesayde. And then when the tenant in tayle immediatly after such claime continueth his occupacio in the same tenementes, this is a disseisin made of the same tenement? vnto him ỹ made the claime. Et sic per consequens, the tenant then hath fee simple. &c.

The second thing is that as ofte as he that hath right to enter, maketh suche clayme, & this notwithstandyng his aduersary continueth his occupacion, as oft as the aduersarie doeth wronge and disseisin to him that made the claime. And for this case so often may he that made the same clayme, for euery suche wrong and disseisin made vnto him, haue a writ

of

of trespas. Quare clausum suũ fregit. &c. Cap.7.
and shal recouer hys damages. &c. and he may haue a writ vpon the estate of kyng Richard the seconde made the fifte yeare of hys reygne, supposinge by hys writte that his aduersarye hathe entred into the landes or tenementes of hym that made the clayme, where his entre was not good nor gyuen to hym by the lawe. &c. & by suche action he shall recouer hys damages. &c.

And if the case be such, that the aduersary occuppe the tenementes wyth force and armes, or with a multitude of people at the tyme of suche clayme. &c. Then after suche clayme he ẏ made the clayme maye for euery such tyme haue a wryt of forcible enter, vpõ the statute of an. 8. H. 6. cap. 6. & recouer his treble damages. &c.

Also here is to see, if the seruaunt of a man that hath title of entre, maye by the commaundemente of hys mayster make continuall clayme for his mayster in his name, and it semeth that in some cases he maye do this, for yf he by hys commaundement come to any parcell of the lande & there maketh clayme. &c. in the name of his mayster, this clayme is good inough for his maister, for this that he hath done all that that it behoueth hys mayster to do in such case. &c.

Cap. 7. Also yf a maister say vnto his seruant that he dare not go vnto the lande, nor to anye parcell of the lande, for to make hys clayme. &c. and dare not approche more nyghe vnto the sayd lande, saue to such a place called Dale, and commaudeth his seruant to go to the same place of Dale, and there to make a clayme for hym. &c. if the seruaunt so doe. &c. this semethe as good clayme for his mayster as yf he had bene there in his own person, for this that the seruaut dyd al that hys maister durst do, and ought to do by the lawe in such case.

Also if a mā be so sicke or so lame that he may not in no maner come to the lāde nor to any parcell of the same, or yf there be a recluse that maye not by cause of hys order goe oute of hys house. &c. yf suche a maner person commaunde hys seruaunt to go and make clayme for hym. &c. & the seruant dare not go vnto the land, nor to any parcell therof for doubte of beating, mayming, or death. &c. and for that cause such seruaunt commeth as nigh vnto the lande as he dare for such drede, & maketh such clayme. &c. for his mayster, it semeth that such claime for his mayster, is good and stronge inoughe in the lawe, for els his maister shuld be into great mischiefe, for it may wel be, that suche a person y is sicke or lame, or recluse, cannot finde any

seruant

seruant that dare go vnto the lãde, nor to any parcel of it, to make the claime for hi. But yf the mayster of such a seruaunt be in good health, & may and dare wel go to the tenementes, or to parcell of it, to make hys clayme for hym. &c. yf suche a maister cõmaũd his seruãt to go to some parcel of the lande, and make clayme for him. &c. And whe the seruant is in goyng to do the cõmaũdement of his maister, he heareth by the way such thinges, that he dare not go to any parcel of the lande for to make any clayme for his maister, and for that cause he goeth as nighe vnto the lande as he dare, for doubte of death, and there he maketh claime for his master, & in the name of hys mayster. &c. it semeth ỳ the doubt in the lawe in such case shall be yf such claime auayleth to his maister or not, for thys that the seruaunt dyd not all thys that hys mayster at the tyme of commaundement durst haue done. Cap. 7.

Also some haue sayd ỳ where a man is in prison, & is disseysed and the disseisour dieth seised, during the time that the disseysie is in prysone, by whyche the tenementes dyscende to the heyre of the dysseysour, they haue sayd that this shall not hurte the disseisee that is in prison &c. but that he may wel enter, notwithstanding such discente, for thys that he maye not Conterning thys matter seke the opinions of the iustices Pa. 6. H. 6.

Cap. 7. make continual claime when he was in prison. And also yf such a one that is in prison be outlawed in an actiō of det, or trespas, or in appeale of robberie. &c. he shal reuert such outlawry by writ of errour. &c. bycause he was in prison at the time of the outlawrye against hym pronounced. &c.

Also if a recouery be had by defaute against such a one that is in prison he shal auoyde the iudgement by a writ of errour, for this ỹ he was in prison, at ỹ time of such defaut made. &c. And bicause ỹ such matters of recorde shall not hurt them that be in prison, but ỹ it shalbe reserued. &c. A multo fortiori, it semeth ỹ a matter in dede, that is to saye such discent had when he was in prison shal not hurt him. &c. specially for this that he may not go out of prison to make continual clayme. &c.

And in the same maner it semeth to thē, where a man is out of the realme in ỹ kinges seruice, for busines of the realme, & yf such a man be disseysed when he is in ỹ seruice of the kyng, & the disseisour dieth seased, such discent shal not hurt ỹ disseisee, but for this ỹ he might not make continual claime. &c. it semeth vnto thē, ỹ when he commeth again into englād, he may enter

vpon the heire of ỹ disseisour. &c. For such a man shall reuerse an outlawrie that is pronounced against him, duryng ỹ time that he is in seruice. &c. Ergo a multo fortiori, he shall haue ayde by the lawe in the other case. &c. Cap. 7.

Also other haue sayd, that if a man be out of the realme, though he be not in the kynges seruice, if such a man beyng oute of the realme, be disseysed of landes or tenements within the realme, and the disseisour disseysed, &c. the disseysee beynge out of the realme, it seemed vnto them that when the disseysee commeth into the realme that he may well enter vpon the heyre of the disseisour. &c. this seemeth vnto them for two causes.

One is that he ỹ is out of the realme may not haue knowledge of ỹ disseysin made vnto him by vnderstandyng of ỹ law, no more thē ỹ a thing done out of the realme may be tried within the same realme by the othe of. xii. men. &c. & to compell suche a mā by ỹ law, to make continual claim which by the vnderstandynge of the law can haue no knowledge or cognisance of such disseisin made or done, this shall be inconuenient, and namely when suche a disseisin is done vnto him, when he was out of the realme, and also the dyeng seysed was done, when he was oute of the realme

Cap. 7.

realme. For in suche case he may not by possibilitie after the common presumption, make no continuall clayme. But other wise it shall be if the disseysie were within the realme at the time of the disseysin, or at the time of the dyeng seysed of the disseysour. ℣. 6. ℣. 7.

Another matter they allege for a prose when the statute of kyng Edwarde the. 3. the. 34. yere of his raygne was made, by whiche estatute no clayme is out. &c. the law was such, ỹ if a kyne were leuied of certain landes or tenementes, if any that was a stranger to the kyne had righte to haue, and to recouer the same landes or tenementes, if he came not and made his claime to it wtin a yere & a day next after the fine leuied, he shalbe barred for euer.

A diuersitie.

Quia dicebatur finis, finem litibus imponebat. And ỹ the law was suche, it is proued by ỹ statute of westm̄ the seconde. De donis cōditionalibus, where it speaketh ỹ if the fine be leuied of tenementes geuen in the taile. &c. Quod finis ipse iure sit nullꝰ, nec habeant heredes huiusmodi aut illi ad quos spectat reuertio, licet fuerint plene etatis in Anglia, & extra prisonam, necesse apponere clameum suum. So it is proued, that if a straunger that hath right vnto ỹ tenementes. if he were out of the realme at the time of the fine

leuied

leuied. &c. shall haue no damage thoughe Cap. 7.
ỳ he made not his claim. &c. though that
such fine was matter of record. By grea-
ter reason it semeth vnto them ỳ a disseī-
sin and a discent ỳ is matter in dede, shal
not so greue him that was disseised whe
he was out of the realm, at ỳ time of the
disseysin, and also at the time ỳ the disseī-
sour died seised, &c. but that he may well
entre, notwithstandyng such discent.

Also enquire if a man be disseysed and
he arrayne assise agaynst the disseysour
and the recognitours of the assise chaunt
for the plaintife, & the iustices of ỳ assyse
will be aduised of their iudgement vntil
the next assise. &c. and in the meane seaso
the disseysour dieth seised. &c. if the sayde
suite of the assise shalbe taken in lawe, or
the said disseise a continual claime, in so
much that no defaut was vnto him, &c.

Also enquire if an abbotte of a mona-
sterie die, and duryng the time of vaca-
cion, a man wrongfully entreth in cer-
tayne parcell of lande of the monasterie
claymynge the lande vnto him and his
heyres, and of that estate dieth seysed,
and the lande discendeth vnto his heyre
and after that an abbotte is chosen, and
made abbot of ỳ same monastery a que-
stion is, if the abbot may entre vpon the
heyre or not. And it semeth to some ỳ the

abbotte

Cap.7. abbot may wel enter in this case, for this that the couent in time of vacacion were not personable to make continual claym for no more then they be personable to sue an action, no more be they personable to make continual claim, for the couente is but a dead bodi without head, for in time of vacacion a graunte made vnto them, or by them is voyde, and in this case the abbot may not haue a writ of entre vpon disseisin against the heire, for this that he was neuer disseysed.

And if the abbot may not entre in this case, then he shal be put vnto his writ of right the whiche shall be harde for the house, wherby it seemeth to them, that the abbot may well enter. &c.

Quere de dubits, legē benediscere si vis.
Querere dat sapere. q̄ sūt legittima vere.

¶ Relesses. ca. viii.

A release of right.

Releses be of diuers maners, ẏ is to say releses of all right ẏ a mā hath in landes or tenementes & releases of actions reals, and personalles & other thynges. Releases of al the right ẏ a man hath in landes or tenementes, &c. is commonly made in such forme or to suche effect, Nouerint vniuersi per presentes me A. de B. remisse, relaxasse & omnino de me & heredibus meis quietum clamasse: Vel sic pro me & heredibus meis quietur clamasse

masse C. de D. totũ ius, titulum & cla Cap. 8.
meũ, que habui habeo vel quoiusmodo
in futurum habere potero, de & in vno
mesuagio, cum partium in futurũ. &c.
And it is to vnderstande, that these
wordes remisisse & quietur clamasse be
of such effect as these wordes relexasse
&c. & also these wordes, which be com-
monly put in such dedes of releses. &c.
ẏ is to vnderstãd. Que quoiusmodo in
futurum habere potero, be as wordes
voide in the lawe, for no right passeth
by a relese but the right that the rele-
sour hath at ẏ time of hẽ release made
For if ther be father & sonne, and the
father be disseised, & the son liuing, his
father releseth by his dede to ẏ dissey-
sour al the right that he hath, or may
haue in the same tenementes without
clause of warrantise, &c. and after the
father dieth the son may lawfully en-
ter vpõ the possession of the disseisour,
for this that he had no right in ẏ lãde
when he released, that is to say, in the
life of his father, but the right descen-
ded vnto him by discente after the re-
lease made by ẏ death of his father. &c.
Also in a relese of al ẏ right ther a mã A grosse.
hath ĩ certain lãds. &c. it behoueth vn-
to him to whõ ẏ relese is made in such
case

Cap. 8. case ỳ he haue a freholde in the landes in dede, or in ỳ law at the time of ỳ release made. &c. for in euery case where he to whom the relese is made, hath a freholde in dede or in law, at the time of the releasse made. &c. thē the releasse is good. Franketenemēt in the law is as yf a man haue disseised an other, & therof dieth seised, by ỳ whiche the tenementes discēde vnto his sonne, how beit ỳ his sonne entre not in the tenemētes yet he hath a frāketenemēt in ỳ law which by force of discēt is throwē vpō him, & therfore ỳ releasse made to him, so being seised of frāketenement in the law is good inough. And yf he take a wife so beyng seysed in the law howbeit ỳ he neuer entre in dede hys wyfe shall haue thereof her dower.

Also in such case of releases of al right howbeit ỳ he to whome the releasse is made, ne hath any thig in the frāktenemēt, neither in dede nor in law, yet ỳ releasse is good inough. As if the disseisour haue let lād ỳ he had by dysseisin to an other for terme of his life sauing ỳ reuercīō to hi, if the disseise or his heires relese vnto the disseisour al the right. &c. ỳ relese is good, for this ỳ he to whom the relese is made, had in

hym

him a reuerciō at ẏ time of a relese made. Cap.81

In the same maner it is yf a lease be made to a mā for terme of life, ẏ remainder vnto an other for terme of an others life, the remainder vnto the thirde in the tayle, the remainder vnto the fourthe in fee, if a straūger that hath right vnto the land relese al his right vnto any of them in the remainder, suche relese is good for thꝫ that euery of them hath a remainder vested in him selfe, yet if the tenaunt for terme of lyfe be disseised, & after he that hath right the possession being in the disseysoure, releaseth vnto one of theim, to whome the remainder was made, al his righte. &c. that release is voyde, for that that he ne had in hym no remaynder in deede at the tyme of the release made, Et nota, that euerye release made to hym ẏ hath a reuercion or a remaynder in dede shall serue and helpe hym that hathe the franketenemēt as wel as him to whome the release is made, yf the tenaunt haue the relese in his hande. &c.

In the same maner it is where a release is made to a tenāt for terme of lyfe, or to a tenant in the tayle, this shal enure vnto them in the reuercyon, or to theim in the remainder, as wel as to the tenaunt of franktenementes & shall haue as good auātage of that, if that they may shew it.

Cap. 8. Also if there be lorde and tenaunte and the tenaunt is disseised, and the lord releseth to the disseisee all the right that he hath in the seignory, or in the lande, this release is good, and the seignorye is extinct. And this is bycause of the priuitye that is betwene the lord and the disseisee for if the goodes of the disseisee be taken and of them the disseisee sueth a Replegiare against the lorde, he shall compell the lorde to auowe vpon him, and if he will auowe vppon the disseisoure then vpon the matter shewed the auowrie shalbe abated, for the disseisee is tenaunt to hym in right and in lawe.

Also if lande be geuen to a man in the tayle, reseruynge vnto the donour & hys heyres a certaine rent, if the donee be disseised, and after the donour releaseth to the donee and to his heyres al the ryghte that he hath in the land, and after the donee entreth into the lande vpon the dysseisour, in this case the rente is gone, for this that the disseisee at the tyme of the release made was tenaunt in righte and in lawe vnto the donoure and auowrye of fine force ought to be made vpon him by the donour for the rente behinde, &c. But yet nothing of the right of the lande that is to say, of the right of the reuercion shal passe by suche release, for this that the donee

donee to whom the relese was made the Cap. 8.
had nothing in the land, but only a right
and so the right of the lande ne may not
passe by such release to the donee.

In the same maner it is if a lease be
made to one for terme of lyke, reseruynge
to the lessour and to his heyres certayne
rent, if the lessee be disseised, and after the
lessour releaseth to the lessee and to his
heyres all the right that he hath in the
landes, and after the lesse entreth, howe
be it that in that case the rente is extincte
yet nothyng of the right of the reuercion
passeth. Causa qua supra.

But if there be very lorde and very te-
naunt & the tenant maketh a feoffement
in fee, the which feoffee neuer became te-
nant to the lorde. &c. if the lorde release to
the feoffour all his right. &c. that release
is in all voyde, for this that the feoffour
hath no right in the land, and he is no te-
nant in right to the lorde, but only tenant
as for the auoury to be made, and he shal
neuer compell the lorde to auow vppon
him for the lorde may auowe vpon the
feoffee, if he will, otherwyse it is where
the verie tenaunte is disseysed, as in the
case aforesayde for if the very tenaunte
that is disseysed holdeth of the Lorde by
knightes seruice, and dieth, his heires
beynge within age, the Lorde shall

Cap. 8. haue and leale the warde of the heyre. And so ye shall not haue the warde of the feoffour that made the feoffement in fee &c. and so it is greate diuersitie betweene these two cases.

Also if a man enfeoffe an other &c. in his lande vpon truste, and to the entente that he shall perfourme his last will, and the feoffour occupieth the same lande at the wil of the feoffees, and after the feoffees release by their deede, vnto the feoffour all his right &c. This hath been in questiō if such release be good or not. And some haue sayd that such release is voide for this that no priuity was betwene the feoffees & their feoffour, in so muche that no lease was made after such feoffement by the feoffes, to their feoffour to holde at their will &c. And some haue sayde the contrary & that for .ii. causes. One is that when such feoffement is made vpon confidence to perfourme the will of the feoffour, that it shalbe vnderstād by the law that the feoffour by & by ought to occupie the lande, at the will of his feoffees, and so it is a maner of priuity betwen thē, as if a mā make a feoffements to other persons & they incontinent vpon the feoffement will and graunt that the feoffour shall occupy the lande at their will, &c.

An other cause they alege, that if suche lande

lande be worth. xl. s. by yeare. &c. Then such a feoffour shalbe sworne in assyses, and in other enquestes in plees reals, & also in plees personels, of what great sūmes so euer ỳ the playntifes will declare &c. and this is by the common law of the lande. Ergo this is for a great cause and the cause is for that ỳ law will, that such feoffours, and their heires ought to occupie. &c. and to take & occupie and enioy al maner profites, issues, and reuenues, &c. as though ỳ tenementz were their owne without interruption of the feoffees, not withstanding such feoffement. Ergo the same lawe geueth a priuite betwen such feoffours, and their feoffees vpon confidence. For which causes they haue sayde suche releasses made by such feoffees vpō confidence to the feoffour, or to his heyrz &c, so occupieng the lande, shalbe good inough. &c. And this is the better opinion as it seemeth. &c. Quere, for this seemeth no law at this day. Lap. 8.

It is holden. 21. H. 7. folio. 2. that the feoffour shall haue an action of tresspas agaynst him that hath the vse.

Also releasses after the matter in deede sometime haue their effecte by force to enlarge the estate of them, to whome the release is made, as if I let certayne land to a mā for terme of yeres, by force wher of he is possessed, and after I release vnto him al the right that I haue in the land, without more woordes set or put in the

Cap. 8. dede, and deliuer vnto him the deed, then he hath estate but for terme of his lyfe, & the cause is for this that when the reuercion or ỳ remainder is in a man ỳ which wyl enlarge by his relese the estate of the tenant, &c. he shal haue no greater estate but in the maner and forme, as if suche a releassour were seased in fee and wyll by his dede make estate to one in a certaine forme. &c. and deliuer vnto him seasin by force of the same deede, if in such deede of feoffement, there be no worde of inheryta-ũce, &c. then he hath estate but for terme of life. And so it is in suche releases made by him in the reuercion, or in the remain der. For if I let lande to a man for terme of his lyfe, and after I release to hym all my right without more sayeng in the re-lease, his estate is not enlarged. But if I release vnto him, and to his heyres of his body engendred, then he hath fee tayle.

And if I release vnto him and to his heires then he hath fee simple. And so in all releases that go to the enlargement of the estate of any man, it behoueth in such case to specifie in the deede of the release what estate he to whom the release is made shall haue, &c.

And some deedes of releases shal enure to set and put the right of him ỳ maketh the release to him, to whom the release is made

made. As a man is disseysed, & he releseth Cap. 8.
vnto the disseisour all the right ỳ he hath
in this case the disseisour hath his rights
so ỳ where hys estate before was wrong
now by the release it is lawful and right
But here note well, that when a man is
seysed in fee simple of any landes or tene-
mentes, & another will release vnto hym
al the right that he hath in the same tene-
mētes it needeth not to speake of ỳ heyres
of him to whome the release is made for
this that he had fee simple at the tyme of
the release made, for yf the release were
made to him & to his heyres for one daye
or for one houre, this shalbe as strōg vn-
to hym in the law as if he had released to
hym and to his heires, for whē his righte
was gone frō hym at one time by his re-
lease without any condition. &c. to hym
ỳ had fee simple it is gone for euer. But
where a mā hath a reuertiō or a remain-
der in fee simple at the time of the relese
made, there yf he will release to the te-
naunt for terme of yeres, or for terme of
lyfe, or to the tenaunte in the tayle, it be-
houeth to determine the estate that he to
whom ỳ relese is made shal haue by force
of the same release. For this that suche
release goeth to enlarge the estate. &c of
him, to whō the relese is made. But other
wise it is where a man hath but a rights

Cap. 8.

vnto the lande, & hath nothyng in the reuercō, nor in the remaynder in dede. For if such a man release all his righte to one that is tenaunt of franketenement there al his right is gone, though that no mencion be made of the heires of hym to whō the release is made. For yf I let landes or tenemētes to a man for terme of his life, if I after release vnto him for to enlarge his estate it behoueth that I release vnto him and to hys heires of his body engendred, or to him & to his heires, or by suche wordes to haue and to holde to him & to his heyres males of his body begotten, or by such lyke wordes &c. or otherwise, he hath no greater estate then he had before. But if my tenante for terme of life let the same land out to another for terme of the life of his lessee, the remainder vnto another in fee, nowe if I relese vnto him to whome my tenāt letted for terme of life, I shalbe barred for euer though that no mencion be made of his heyres, for this yt at the time of the release made, I had no reuercion, but onely a righte to haue the reuercō. For by such a lease wt a remainder ouer that my tenāt made, in this case my reuercion is discontinued. &c. & suche a relese shal enure vnto him in ye remaīder to haue aduātage of this as wel as to the tenāt for terme of life, for to that entēt the

tenant

tenant for terme of lyfe, and he in the re- Cap. 84.
maynder be as one tenaunt in the lawe, and be as yf one tenaunt were sole seised in hys demesne as of fee, at the tyme of suche release made vnto him. &c.

Also yf a man be disseysed by two, yf he release vnto one of them, he shall holde hys felowe out of the lande, and by suche release he shall haue sole possessyon, and estate in the lande. But yf one disseisoure enfeoffe two in fee, and the dysseisee release to one of the feoffees, this shal enure to both the saide feoffees. And the cause of the diuersitie betwene these two cases is pregnaunt inoughe.

Also if I be disseysed, & my disseysoure is disseised, if I release to the disseisour or my disseisour I shal neuer haue assise nor enter vpon his disseisour, for this that his dysseisour hath my right by my release. &c.

Also it semeth in this case, that if there were twelue disseisours eche after other, and I release to the laste disseysoure, he shal barre al the other of theyr action and their titles. And the cause is as it semeth for this that in many cases when a man hath a lawefull title to enter, though he enter not. &c. he shal defete al mens titles by his release. &c. But thys is not in euerye case, as shalbe sayde afterwarde.

Also if my disseisour letteth the tene-

Cap. 8. mētes wherof he disseised me, to a mā for terme of life, & after the tenāt for terme of lyfe, alyeneth in fee, and I release to the alienee. &c. thē my dysseisour may not enter causa qua supra. though ẏ at one time the alienation was to hys disheritāce. &c.

Also if a man be disseysed, the whiche hath a son within age, and dieth, and beyng the sonne within age the disseysoure dyeth seysed, and the lande dyscendeth to his heire, and a straunger abatethe and after the sonne of the disseisee, when he commeth vnto full age releaseth all hys ryght. &c. to the abatours. In this case the heire of the disseisour shalbe barred of his assise of mort dancester, agaynst the abatour for this that the abbatour hathe the righte of the sonne of the disseisee, by his release & the entre of the sonne was lawfull. &c. for this that he was within age at the time of the discent. &c.

Cū hoc cōcordat opinio omniū iustitia P. 9. H. 7.

But if a man be disseised, and the disseysour maketh a feoffement vpon cōdicion, that is to saye, yelde vnto him certain rent, & for the defaut of paimēt, a reenter. &c. if the disseisee release to the feoffee vpon condicion, yet mēdeth thꝫ not the estate of ẏ feoffee vpon condicion, for notwithstāding such release yet hꝫ estate abideth vpō condicion, as it was before. In the same maner it is where a man is dissei-

disseysed of certaine lande, and the dissei- Cap. 8.
sour graunteth a rent charge oute of the same land, though that after the disseysee releaseth vnto the disseysoure. &c. yet the rent charge abideth in his force. And the cause is in these two cases, that a mā shal haue none aduantage by such relese, that shalbe against his owne proper acceptāce and against his owne graunt. And though ẏ some haue said, as is aforesayd, that wher the entre of a mā is congeable vpon a tenant, if he relese to the same tenant, that this release auayleth, vnto the tenant: so as if he had entred vpon the tenant, and after enfeoffed him. &c. this is not true in euery case, for in the first case of these two aforesaid cases, if the disseisee in fee, enter vpon ẏ feffee vpon condicion and after enfeoffeth him, then the condicion is al put asside and voide. And so in the seconde case if the disseysee enter, and enfeoffe him that graunted the rente charge, then is the rent charge adnulled and auoyded. But it is not auoyded by any such release, without entre made, &c

Also if a man be disseysed by a chylde within age, the which alieneth in fee, & the alienee dieth seised, and his heyre entreth, beyng the alienour within age.

Now it is in the election of the disseysour to haue a writ of Dum fuit infra

etatem

Cap. 8

etatem, or a writte of ryght agaynst the heyre of the aliene, and which writte of the two so euer he taketh of them he ought to recouer by the law. And also he may enter into the land without any recouery by action, and in this case the entre of the disseisee is taken away. But in this case if the disseisee release his ryght to the heyre of the alyene, and after the disseisour bringeth a writ of right against the heire of the aliene, and he seemeth the mise vpon the clere right, &c. the graunde assise ought by the lawe to finde that the tenãt hath more clere right, &c. then hath the disseisour, for this ẏ the tenant hathe the right of the disseisee, by his release, which is more auncient and more cleare right then the right of the disseysour, for by such release al the right of the disseisee passeth vnto the tenaunt and is in the tenant. And to this some haue sayde that in such case where a man hath right to landes or tenementes, but his entre is not lawfull if he relese vnto the tenant al the right. &c. then suche relese shall enure by way of extinguyshment. As vnto this it may be said, that this is trouth vnto him that releaseth, for by his release he hath dismissed himselfe cleane of all his right as to his person. But yet the right that he had may well passe and goe vnto the tenante

nante by his release, for it shoulde be inconuenient that suche an auncient right should be extinct all vtterly by his relese &c. for it is commonly sayde, that ryghte may not die. But a release that goeth by the way of extinguishment agaynst all persons, is where he, to whome the release is made, mai not haue this that vnto him is relesed: as if there be lorde and tenaunt, and the lorde releaseth vnto the tenant all the right that he hath in the lordeship, or all the right that he hathe in the lande, &c. suche a release goeth by way of extinguishement against all persons, for this that the tenaunte may not haue the seruice of himselfe.

Cap. 8.

A release in vsynge by way of extinguishment.

In the same maner it is of a relese made to the tenant of the land of a rent charge, or of a common pasture, &c. for this that the tenant may not haue that, by way of takyng it ẏ vnto him is relesed. &c. so such releases shal enure euermore by way of extinguishment against al persons. &c.

And to proue ẏ the graund assise ought to passe for the tenant in ẏ case aforesaide I haue hard often in the lecture vpon the statute of westminster the. ii. ca. iii. that beginneth. In casu quando vir amiserit per defaltam tenementum quod suit sus vroris sue. &c. That is at the common lawe before the statute, if a lease were

made

Cap. 8. made to a man for terme of lyfe, the remaynder ouer in fee, and a ſtranger by a fayned action recouer againſt the tenant for terme of life by defaute and after the tenant dieth, he in the remainder had no remedy before the ſtatute, for this that he hath no poſſeſſiō of the land. But if he in the remainder had entred vpon ỹ tenant for terme of lyfe, and diſſeyſed him, and after ỹ tenant entreth vpon him, & after the tenant for terme of life leſeth by ſuch recouere had by defaut, and dieth, nowe he in ỹ remainder may well haue a writ of right againſt him ỹ recouered, for this that the miſe ſhal be ioyned onely vppon the clere right. &c. And yet in this caſe the ſeiſin of him in the remaynder was defeted by the entre of the tenant for terme of life. But peraduenture ſome wil argu and ſay that he ſhall haue no writte of right in this caſe, for this that when the myſe is ioyned, it is ioyned in ſuche a maner that is to ſay, if the tenaunt haue more cleare right to the lande in the maner as he holdeth, then the demaundant hath in the maner as he demaundeth. And for this that the ſeyſin of the demaundant was defeted by the entre of the tenaunte for terme of life, then he hath no right in the maner as he demaundeth. Vnto this it may be ſayde ỹ theſe wordes

Wordes

Modo et forma prout. &c. in many cases be wordes of maner of pleadynge and no wordes of substance, for yf a man bryng a writ of entre, In casu proviso of alienacion made by the tenant in dower to his dysinheritaunce, and pleadeth of the alienacion made in fee, and the tenaunt sayth that he alyened not in the maner as the tenaunte hath declared, and vpon this they be at issue, and it is founde by verdite that the tenaunt aliened in the tayle, or for terme of anothers lyfe, the demaundant shall recouer, and yet the alienacion was not in the manr as the demaundant hath declared. Cap. 8. The effect of these wordes modo et forma.

Also yf there be lorde and tenaunt and the tenaunte holdeth of the lorde by fealtye onelye, yf the lorde dystrayne, the tenaunt for rent, and the tenaunt bringeth a writ of trespasse agaynste his lorde for his cattell so taken, and the lord pleadeth that the tenaunt holdeth of him by fealtie and certayne rente, & for the rent behinde he came and distrayned, &c. and demaundeth iudgement of the writ brought agaynst him. Quare vi et armis, &c. & the other saith, that he holdeth not of him by the maner as he supposeth and vpō thys they be at an issue, and it is found by verdite that he holdeth of him by fealty, tantum in this case ỳ writ shal abate and yet

he

Cap. 8. he helde not of the lorde in the maner as the lord had sayd, for the maner of the issue is, whether the tenaunte holdeth of him or not. For if he hold of him, though ꝑ the lord distraine the tenaunt for other seruices ꝑ he ought not to haue, yet suche writ of trespas. Quare vi et armis. &c. lieth not agaynst the lorde but shall abate.

Also in a writ of trespasse of beatyng or of goodes taken, if the demãdant plead nothynge culpable in the maner as the plaintike supposeth, and it is founde that the ꝛefendãt is culpable in another towne within the same shire, or at another day, then the playntike supposeth, yet he shall recouer, And in many other cases these wordes, that is to saye, in the maner as the demaũdant or the playntike hath supposed, be no matter of substaunce of that issue, for in a writ of right wher the mise is ioyned vpon the clere righte, it is as much to say, and to suche effect, that is to witte, whether hath the more righte the tenaunt or demaundant to the thynge is demaunded. &c.

Also if a man be dysseysed, and the disseisour dieth seysed. &c. and his sonne and heyre entreth in by discent, and the dysseisee entreth vpon the heyre of the disseisour the whiche entre is a disseisin. &c. yf the heyre bryngе assise or a writ of entre

in

in nature of assise he shall recouer But yf the heyre bryng a writte of ryght against the disseisee, he shall be barred. For thys that when the graunde assyse is sworne, they? othe is vpon the clere ryghte, and not vpon the possession. &c. for if the heyre of the disseisour had brought assyse of none disseysin, or a writ of entre in nature of assise, and recouered against the disseisee, and sued execution: yet may the disseisee haue a writ of entre in ꝑ par. against him of the disseisin made vnto him by his father, or he may haue against the heyre a writ of right. But if the heyre ought to recouer against the disseysee in the case forsayde by a writ of right, then all hys ryghte shalbe clerely gone, for this that a final iudgement would be geue against him, which shuld be against reason where the disseisee hath more clere right. &c. Cap. 8.

Finall iudgemẽt in a writ of right.

And knowe ye my sonne, that in a writ of right after thys that the four knightes be chosen in the graunde assise, then there is no greater delay then in a writ of formedone after this that the parties be at one issue. &c. and yf the issue be ioyned vpon battayle, then there is lesse delaye.

Also a release of all the ryghte. &c. in some case is good made vnto him that is supposed tenant in the lawe, thoughe he hath nothyng in the tenementes, as in a

Cap. 8. Precipe ꝙ reddat, if the tenaũt aliene the lande hauyng the writ, & after the demãdant releseth to him al his right ẏ release is good, for this ẏ he is supposed to be tenaunt by the suit of ẏ demandaũt, & yet he hath nothing in the lande at the time of the release made.

In ẏ same maner it is if in a precipe quod reddat, the tenãt voucheth, & the vouche entreth in the garrãtie, if after the demãdant release vnto the vouche al his righte. &c. this is good inough, for this that the vouchee, after this ẏ he hath entred in the garranty, is tenaunt in law to the demandant.

Also as th releses of actions reals, & actions personals, it is so ẏ some actions be mixt in the realtee, & in the personaltie, as if an actiõ of wast be sued against ẏ tenãt for terme of lyfe, this actiõ is in ẏ realtie for this ẏ the place wasted shalbe recouered, and also it is in the personalty, for this that the treble damage shalbe rerouered for the wrong and waste done by tenant, and for this in this action a release of actions reals is good plee in barre, & so is a relese of actions personals. In the same maner it is of assise of nouel disseisin for this ẏ it is mixt in the realty & in ẏ personalty, but if suche assise be

arained against the disseisour and the te- Cap.8.
nant, the disseisour may wel pleade a re-
lease of actions personalles, for to barre
the assise, for none may pleade release of
actions reals, in assise but the tenant. &c.
Also in suche actions reals ẏ behoueth
to be sued agaynst the tenant of the frãk-
tenement, if the tenaunt haue a relese of
actions reals of the demaundant made
vnto him, before the writ purchased & he
pleedeth it, this is a good plee for the de-
mandant to say, ẏ he that pleadeth ẏ plee
had nothing in the franktenement at the
time of the relese made for then he had no
cause to haue action real against him.
Also in suche case where a man may
enter in landes or tenementes, and also
where he may haue of this an actiõ reall
which is geuen vnto him by the lawe a-
gaynst the tenant, if in this case the de-
maundant release to the tenant all ma-
ner actions realles, yet this taketh not
away the entre of the demaundant, but
the demaũdant may wel entre notwith-
standyng suche release, for this that no-
thyng is relesed but the action. &c.
In the same maner it is of thynges per-
sonals. As if a man wrongfully take my
goodes, if I release vnto him all actions
personals, yet I may by the law take my
goodes out of his possession.

Cap. 8. Also if I haue cause to haue a writte of detinue of my goodes against an other though that I release vnto him al actiõs personalles, yet I may take my goodes out of his possession, for this that no right of goodes is released to him but onely the action. &c.

Also if a man be disseysed and the disseisour maketh a feoffement vnto diuers persons, vnto his vse, and the disseisour continually taketh the profyttes. &c. and ỹ disseisee releaseth vnto him all actions reals, and after he sueth agaynst him a writ of entre in nature of assyse, because of the statute, for this that he taketh the profites. &c. Enquire howe the disseysour shalbe holpen by the sayde release, for if he will pleade the release generally then the demaũdant may say, that he had nothynge in the franketenement, at the tyme of the release made, and if he plead the relese specially, then it behoueth him to know a disseysin, and then may the demaundant entre in the lande. &c. by his conisance of the disseysin, &c. but peraduenture by especial pleadyng he may be barred of the assise ỹ he sueth. &c. though that the demaundant may enter, &c.

An. 31. H. 6. ca. 3.

Also if a man sue appele of felony of the death of his auncester agaynst an other though the appellant release vnto the defe-

dant

dant all maner actions reals, and perso- Cap. 8.
nals, this shall not helpe the defendant, for this that this appeale is not an action reall, in so much that the appellant shall not recouer any realtie in suche appeale. For suche appele is no action personall, In so muche that the wronge was done vnto his ancestor, and not vnto him but if he release to the defendant al maner of actions, then it shall be a good barren in the appeale. And so a man may se, that a release of all maner of actions, is better then a release of al maner of actions reals and personals. &c.

The better release of actions.

Also in appele of robbery, if the defendant will plede a release of the appellant of all actions personals, this seemeth no plee, for an action of appeale, where the appellant shal haue iudgement of death. &c. is more high then an action personall and is not properly said an action personall, and therfore if the defendant wyll pleade a release of the appellant, to barre him of the appeale, it behoueth him to haue a release of all maner of actions of appele, as it semeth. &c. But in appeale of mayme a release of all maner of actions personals, is a good plee in bar, for this that in such an action he shall not recouer but domage. &c.

Also if a man be outlawed in an actiõ

Cap. 8. personall by proces of the original and bryngeth a writ of errour, if he at whose suite he was outlawed, will plede agaīst him a releasē of al maner of actions personalles, this seemeth no plee, for by the sayd action he shall recouer nothynge in the personaltie, but all onely to reuerse ỹ outlawrie, but a releasē of a writ of errour shalbe a good plee.

Also if a man recouer det or damage, & he releasē to the defendāt al maner of actions, yet he may lawfully sue execution by Capias ad satisfaciēdum, or by elegit, or by Fieri facias, for execution by suche writ may not be sayd an action: but if after a yere and a day the plaintife will sue a Scire facias, to know if the defendant can any thing say, for what cause ỹ plaintife shall not haue execution, &c. then it seemeth a releasē of all action shalbe a good plee in barre, but some haue thought the contrary, in so muche ỹ the writ of Scire facias, is a writ of recouery, & is to haue execution. But yet in so much ỹ vpon the same writ ỹ defendant may plede diuers matter after the iudgēment giuē, to put him fro execution, as outlawry, & diuers other matters &c. therfore it may well be sayd action. &c. & I trow ỹ in a Scire facias, out of a fine, a releasē of al maner of actions is a good plee in bar, but where a man

mã recouereth dette or damage, and it is accorded betwene thẽ, that the plaintyfe shall not sue execution, then it behoueth that the plaintyfe make a release to hym of al maner of actions. Cap. 8.

Also if a man release to another al maner demaũdes, this is the beste release ẏ he to whom ẏ release is made can haue, & most shall enure to his aduaũtage, for by such a release of al maner of demaundes, al maner of actiõs reals & personals, and actions of appeales be gone and extinct, and al maner of executions be gone and extincte. Quere. For Fitz James chyefe Justice of Englande helde the contrary, P. 19. H. 8. for thys that entre might not properly be called a demaunde.

And yf a man hath title to enter in any landes or tenementes, by suche relese hys tytle is gone, and if a man haue rent seruyce, or rent charge, or cõmon of pasture &c. by such release of all maner demaũdes made to the tenaunt of the lande whereof the seruice of the rents or the common is goynge oute, or in what lande soeuer the common be, the seruice and rente, and the common is gone and extincte. &c.

Also if a man release to another al maner quarels, or al cõtrouersies or debates betwene thẽ. &c. Enquire to what matter and to what effect such wordes exted. &c.

Cap. 8. Also if a mā be bounde by his dede to another in a certain sum of money to pay at the feast of s. Mighel then next folowing. &c. if the oblige before ẏ said feast, relese vnto ẏ obligeour all actions, he shalbe barred of the dutie for euer, and yet he might haue none action at the time of the release made.

But if a mā let lande to another for terme of yeres, to yeld at the feast of s. Mighel next ensuing. xl. s. and after ẏ same feast he releaseth to the lessee all actions, yet after ẏ same feast he shall haue an actiō of det for the none payment of the. xl. s. notwithstanding the sayde release. Studye the cause of the diuersitie betwene these two cases.

Also where a man wil sue a wryt of right, it behoueth ẏ he plede of the disseisin of him, or of his auncesters, & also ẏ the seisin was in time of the same king, as he pledeth in hꝫ plee, for this is an aūcient law vsed, as it appereth by report of a certain plee, in the heire of Notinghā, ī such forme as insueth.

Syr John Barrey brought a writ of right against Reynold assington, and demaūded certaine tenementes. &c. the mise was ioyned in the bauke, and the originall, and the processe were sente before

before Justices errãtes, where ẏ parties came, and the. xii. knightes were sworne, without chalẽge of ẏ parties for this that the election was made by assent of ẏ parties of the. iiii. knights and the othe was such, that I shal say truth. &c. whether. R. of. A. haue more right to holde the tenementes, ẏ John Barred demaũdeth against him by his wrytte of righte, or John to haue the tenementes as he demaũdeth, and for nothing to lette to saye the trouth as god me helpe. &c. without sayeng to their estemyng, and suche othe shalbe made in attaynte, and in battale, and in wagyng of lawe, for those wrytes set euery thyng vnto an ende. Cap. 9.

But John Barrey pleaded of ẏ disseisin of one Raufe hꝫ aũcester in time of kynge Henry, & Reynolde vpon the myse ioyned tẽdered halfe a marke for ẏ time. &c. And vpõ this Herle Justice sayd to the graunde assise, after this ẏ thei were charged vpõ the clere right. Good mẽ. Rainold gaue half a marke to the kyng to the entent, yf he find, ẏ ẏ auncester of John was not seysed in time, ẏ the demaundant hath pleded, ye shal enquire no furder vpõ ẏ righte & for this ye shal say to vs whether the

Cap. 8. ancestor of John rauke by name was seised in the tyme of king Henry as he hath pleded or not, and if ye finde, that he was not seased in the same tyme, ye shall enquyre no more, & yf ye finde that he was seased, then enquyre farther of the right. And after the graunde assyse came with theyr verdyte, and sayd, that Rauke was not seased in the time of king H. wherby it was awarded, that Raynolde shoulde hold the tenemētes against the demaundant, and to him and to his heyres quite of Jhon Barray and hys heyres, to the remenaunt, and John in the mercy.

And the cause why ý I haue shewed to the my sonne this plee, is for to proue the matter aforesayd, whiche is sayde in the wrytte of righte. &c. for it semeth by this writ, ý if Raynolde had not tendered this halfe marke, for to enquyre the tyme. &c. then the grande assyse ought to haue ben charged only of the clere right, and not of the possession. &c. And so that alwayes in a wryt of ryght yf the possession whereof the demaundant pleadeth, be in the time of the kynge as he hath pleaded: then the charge of the graunde assise shalbe onely vpon the clere ryghte, thoughe that the possession were agaynst the law, as hath bene sayd before in thys chapiter.

Confirmation. Cap. ix.

A dede

A Deede of confirmacion is moste commonly made in such fourme, or to such effect. Nouerint vniuersi, &c. me A. de B. ratificasse, approbasse, & confirmasse C. de D. statum, & possessionē quos habeo de & in vno messuagio. &c. cum pertinentiis in N. &c. And in some case a deede of confirmacion is good and vaylable, where in such case a deede of relese is not good nor vaylable. Cap. 9. D

As if I let lande to a man for terme of his lyfe, the which letteth the same lande to another for terme of.xl. yeres, by force of the whiche he is possessed, if I by my deede confirme the state vnto the tenante for terme of yeres, & after the tenante for terme of life dieth, durynge the terme of xl yeres, I may not after enter into the lande, during the same terme, yet if I by my deede of release haue released to the tenant for terme of yeres, in the life of ỳ tenant for terme of life, this relese shalbe voyde, for this ỳ then no priuite was betweene me and the tenaunte for terme of yeres, for a release is not auaylable to the tenaunt for terme of yeres, but where a priuitie is betweene him & him ỳ releseth.

And this is to be vnderstande where a man releaseth the right of a franketenement, or inheritance. But in case where he ỳ releseth, hath right but for a certaine terme

Cap. 9. terme it is otherwise. As if the tenant for terme of yeres be put out by a straunger that maketh a lease to another for terme of yeres, if he that was put out release to the second tenant for terme of yeres, this is a good release. Causa qua supra, and yet no priuitie is betwene them.

Also if I be disseysed, and the disseysour maketh a release to another for terme of yeres, if I release to the termour this is voyde, but if I confirme his estate this is good and effectual.

Also if I be disseysed, and I confirme the estate of the disseysour, then he hath a good and rightfull estate in fee simple, though that in the deede of confyrmacion no mencion is made of his heires, for this that he had fee simple at the tyme of the confirmacion. For in such case if the disseisee confirme the state of the disseysour to haue and to hold to him & to his heyres of his body engendred, or to haue and to holde to him for terme of his lyfe, yet the disseysour hath fee simple and is seased in his demesne as of fee, for this that when his estate was confyrmed he had fee simple, and such deede may not chaunge his estate without enter made vpon him. &c.

In the same maner it is, if his estate be confirmed for terme of a day, or for terme of an houre he hath a good estate in fee

simple

simple, for this ẏ his estate in fee simple was ones confirmed. Quia confirmare idem est quod firmum facere. Also if my disseysour make a lease for terme of lyfe, the remainder ouer in fee, if I release to ẏ tenant for terme of life, this shal enure to him in the remainder. But if I confirme the state of the tenant for terme of lyfe, yet after his decese he may well enter, for this ẏ nothing is confirmed but ẏ estate of the tenant for terme of lyfe, so ẏ after his decease I may well enter. But when I haue relesed all my right to the tenant for terme of life, this shal enure to him in the remainder, or in the reuercion for this ẏ al my right is gone by such release. But in this case if the disseisee confirme the estate & the title, to him in ẏ remainder wout any confirmacion made to ẏ tenāt for terme of life, ẏ disseise may not entre vpō the tenant for terme of life for this ẏ the remainder is depēding vpō the estate of the tenant for terme of lyfe, and if his estate be defeted, ẏ remainder shall be defeted by the entre of ẏ disseisee, & is against reson ẏ he shall by his entre defete ẏ remaīder against ẏ confirmatiō. Cap. 9.

Also if there be two disseysours, and the disseysee releaseth to one of them, he shall holde his felow oute of the lande, but if the disseysee confirme the state of the

Cap. 9. the one, without more speche in the dede some say that he shal not hold his felowe out, but he shall holde ioyntly with him for this that nothyng was confirmed but his estate that was ioynt. And for this some haue sayd, that if two ioyntenantz be, and the one confyrmeth the estate of the other that he hath but a ioynte estate as he had before, but if he haue such wordes in the dede of confirmacion, to haue and to hold to him, & to his heires all the tenementes, wherof mencion is made in the confirmacion, then he hath estate sole in the tenementz, & therfore it is a good & a sure thing in euery confirmacō to haue these wordes to haue & to holde the tenement, &c. in fee or in fee taile, or for terme of life or for terme of yeres after as the case or the matter is, for after the entente of some if a man let lande to an other for terme of life, & after he confyrmeth his estate þ he hath in the same lande to haue and to holde his estate to him & his heirz this confirmacion as cōcerning his heirz is voyde, for his heires can not haue his estate which was but for terme of his life but if he confirm his estate by these wordes to haue the same land to him and to his heyres, this confirmacion maketh fee simple in this case to him in the land for this that those woordes to haue and

to

to holde. &c. goeth to the lād & not to ẏ estate ẏ he hath, so note ẏ diuersity. &c. Cap. 9.

Also if I let certain land to a womā sole, for terme of her life, the which taketh a husband & after I confirme the estate to the husbande & to the wife to haue & to holde the lande for terme of their. ii. liues, in this case the husband holdeth not ioyntly with his wife, but holdeth ẏ right of his wife for terme of his life but this cōfirmaciō shal enure to ẏ husband by way of remainder for terme of his life, if he suruiue his wife but if I let lande to a woman sole for terme of yeres whiche taketh an husband, & after I confirme ẏ estate to the husbād & the wife, to haue & to hold the lande for terme of bothe their liues, in this case they haue ioynt estate in the frāktenemēt of the land, for this ẏ the wife had no franketenement before.

Also if my disseisour graunt a rente charge out of the lande, wherof he disseised me, & I reherse the said graūt do confirme the same graunt, and all ẏ is comprised within the sayd graūt and after I enter vpon the disseisour, enquire in this case if the lande be discharged of the rente yea or no.

Also if a person of a church charge ẏ glebe

Cap. 9.

glebe of his church by his dede, & after the patronee, & the ordinary cõfirme the same graũt, and al ỹ is cõpriſed within ỹ ſame graunt, then the ſame graunt ſhalbe in his ſtrẽgth after the purpoſe of the ſame graunt, but in ſuch caſe it behoueth, ỹ the patrone haue fee ſimple in the auouſon, for if he haue eſtate in the auouſon but for terme of life, or in tayle, then the graunt ſhalbe good but durynge his life, and the lyke of the perſon that graunted it. &c.

Alſo yf a man let land for terme of life which tenaunt for terme of lyfe chargeth the land with a rent in fee, and he in the reuercion confirmeth the ſame graunte, this charge is good ynough & effectuall.

Alſo if there be a perpetuall chauntry whereof the ordinary hathe nothynge to medle, nor to do, there the patrone of the chauntry, and the chapleyne of the ſame chauntry may charge the chauntry with a rent charge in perpetuity.

Dedi & conceſſi.

Alſo in ſome caſe theſe verbes dedi & conceſſi, haue the ſame effect in ſubſtaũce and ſhal enure to the ſame entent, at this verbe confirmaui. As yf I be diſſeyſed of a plough lande, and after I make ſuche a dede. &c. Sciant preſentes. &c. quod dedi, to the diſſeiſour the ſayd plough land. &c. and I deliuer all onely the deede to hym withoute liuerye of ſeyſin of the lande

thys

this is a good confirmacion, and as strōg in the lawe, as yf he had in the dede thys verbe confirmaui. Cap. 91

Also if J let lande to a man for terme of yeres, by force of which he is possessed and after J make to hym a dede. &c. quod ded. & concessi. &c. ẏ same lande to haue for terme of hys life, & deliuer hym his dede thē by & by he hath estate in the lande for terme of his life, and if J say in ẏ dede to haue and to hold to him and to his heires of hys body engendred thē he hath estate in the taile, & if J say in the dede, to haue and to hold to him and to his heires, then he hath estate in fee simple, for this shall enure to hym by force of confirmacion to enlarge his estate.

Also yf a man be disseysed, and the disseisour dieth seised, and his heire is in by discent, and after the disseisee, & the heyre of the disseysoure make ioyntly a dede of feoffement to an other in fee, and a liuery of seisin vpō this is made, as to the heire of ẏ disseisour ẏ ensealeth the dede, the tenemēts passe by ẏ same dede by way of feoffemēt & as to the disseysee ẏ ensealeth ẏ same dede, this shall not enure but by way of cōfirmacō, but if ẏ disseisee in this case brīg a writ of entre in ẏ per & cui, against ẏ alienе of ẏ heire of the disseisour, enquire how he

Cap. 92

shal pleade that dede against the demandant if by way of confirmacion or not. &c.

And know ye this my childe, that it is one of the most honorable, laudable, and profitable thynges in oure lawe, to haue the science of wel pleading in actions realles and personals, and for this I counsayle the especiall, to see thy courage and care to learne that. &c.

The vtilitie of pleedyng.

Also if there be lord & tenant, & the lorde confirmeth the estate ỳ the tenant hath in the tenementes, yet the seignoury wholy abideth to the lorde, as it was before.

In the same maner it is, if a mā haue a rēt charge, or a common of pasture out of a certaine land, & he confirme the state, ỳ the tenant hath in the lande, yet abydeth to the confirme the rent charge.

In the same maner it is: if a man haue common of pasture in the lande of another, yf he confyrme the state of the tenaunt of the lande, nothing shall departe from hym of hys common, but thys not withstandynge the common abidethe to him as it was before. But if there be lord and tenaunt, whyche tenaunt holdeth of his lorde by seruice of fealtie, and .xx.s. of rente, yf the lorde by hys deede confyrme the estate of the tenant to hold by .xii.d. or by a peny, or by an ob. in this case the tenant is discharged of all other seruices, &

shall

shall yelde nothing to the lorde, but that Cap.9.
that is compryſed within the ſame confirmacion, yet if the lorde will by the deede of confirmacion ỳ the tenant in this caſe ought to yelde to him an hauke, or a roſe yerely at ſuche a feaſt, &c. this confirmacion is voide, for this that he reſerueth to him a new thing that neuer was parcell of the ſeruices before the confirmacion, and ſo the lorde may abridge the ſeruices by ſuch confirmacion, but he may not reſerue to him a new ſeruice. &c.

Alſo if there be lorde, meſne, and tenant and the tenant is an abbot that holdeth of the meane by certayn ſeruices yerely, the which tenant hath no cauſe to haue acquitaunce againſt his meane, for to bring a writ of meſne, &c. In this caſe if the meane confirme the ſtate ỳ the abbot hath in the land to haue and to holde the lande vnto him and to his ſucceſſeurs in frank almoigne, or fre almes, &c. in this caſe this confirmation is good, and then the abbot holdeth of the meane in franke almoigne: and the cauſe is for this, that no new ſeruices is reſerued, for all the ſeruices ſpecially ſpecified be extincte and nothinge is reſerued to the meane, but the abbot ſhall holde of him the lande and that was before the confirmatiõ: for he that holdeth in frank almoigne ought

Cap. 9. to do no bodely seruice, so ỳ by suche confirmacion it appeareth that the meane shall reserue vnto him no new seruice, but ỳ the land shalbe holden of him as it was before, and in this case the abbotte shal haue a writ of mene, if he be distrained in his defaut by force of the sayd confirmacion, where percase he myght not haue such a writ before. &c.

Also if I be seased of a villayne, as of a villayne in grosse, and an other taketh him out of my possession, claymyng him to be his villayne, where he had no right to haue him as his villayne, and after I confirme vnto him the estate that he hath in my villayne, this cõfirmacion semeth voide, for this ỳ none may haue possession of a man, as of a villayne in grosse, but he that hath right to haue him & his villayne in grosse. And thus in so muche that he, to whom the confirmacion was made, was not seised of him as of his villayne at the time of the confirmacion.

Such confirmacion is voyde, but in this case if such wordes were in the dede, sciatis me dediſſe & concesſiſſe tali. &c. talem villanum meum, this is good, but this shal enure by force and way of graunte and not by way of confirmacion. &c.

Also sometime these verbes dedi & concessi, enure by way of extinguishment of the

the thyng geuen or graũted. As if a tenãt holdeth of his lord by certaine rente, and the lorde by his deed graunteth to the tenant, & to his heyres the rent. &c. this shal endure to ỹ tenãt by way of extinguishmẽt, for by this grant ỹ rent is extinct, &c. Cap. 9.

In the same maner it is, wher one hath a rent charge out of certaine lande, and he graunteth to the tenant of the lande, ỹ rent charge. &c. And the cause is for this, that it appeareth by the woordes of the graunte, that the will of the donoure is, that the tenaunt shall haue the rente. &c. and in so muche that he myght not haue nor perceyue any rente out of his owne lande, for this the deede shalbe vnderstãd and taken for the most aduantage and auayle of the tenant that may be, and that is by way of extinguishment.

Also if I let lande to a man for terme of yeres, and after I confirme his estate without mo woordes put in the deede by this he hath no greater estate, but for terme of yeres, as he had before, but if I release to him my right that I haue in the lande without mo woordes: put in ỹ deed he hath estate of franketenement, and so mayst thou my childe vnderstand diuers greate diuersities between releases and confirmacions.

Also if I beynge within age let lande

Cap. 9. to one for terme of.xx.yeres.and after he graunteth ẏ land to an other for terme of x.yeres so the graunt is but percell of his terme in this case when I am of ful age, if I release vnto the grauntee of my leue ꝛc.this release is voyde,for this ẏ there is no priuitie betwene him and me.ꝛc. But if I confirme his estate,then this confirmacion is good,but if my lesse graunt al his estate to another,thē my release made to the grauntee is good and effectuall.

Also if a man graunt a rent charge out of his lande to an other for terme of his life,and after I confirme his estate in ẏ sayd rente,to haue and to hold to him in fee tayle,or in fee simple, this confirmacion is voyd,as to enlarging of his estate for this that he that confirmed had no reuercion in the rent.But if a man be seased in fee,of rent seruice,or of rēt charge and he graūteth the rente to an other for terme of lyfe,and the tenant attorneth, and after he confirmeth the estate of the grantee in fee tayle,or in fee simple, this confirmacion is good, as to enlarge his estate after the wordes of the deede of cōfirmacion,for this that he ẏ confyrmed ẏ estate at the time of ẏ confirmacion, had the reuersion of the rent.ꝛc. But in this case aforesayde, where a man graunteth a rente charge to an other for terme

of

of life, if he will that the grātee shal haue estate in the tayle or in fee, it behouethe him that the dede of the grant of the rent charge for terme of lyfe be surrendred or cancelled, and then to make a newe dede of such a rent charge, to haue and to take to the grauntee in the tayle, or in fee, &c. Et paucis dictis plurima intēdere potes. Cap. 10.

Attournement. Cap. 11.

Attournement is, yf there be lorde and tenant, & the lord will graunt by his dede & seruice of his tenant to an other for terme of yers, or for terme of lyfe, or in taile, or in fee, him behoueth that the tenant atturne to the grantee in the life of the grantour, by force and vertue of the grant, or otherwise the grāt is voyde, & atturnemēt in none other thyng in effect, but when the tenant hath harde of the graunt made by his lorde, that the same tenant by woorde agree to the sayd graunt, as to saye to the grantee. I agree me to the graunt made you, or I am wel contente of the graunte made to you. &c. but the more common atturnemēt is to saye sir I atturne to you by force of the same grante, or I become your tenant. &c. or to deliuer vnto the graūtee a peny or a halpeny, or a tarthyng, by way of attournement. &c.

Also if the lord graūt ỳ seruice of his

Cap. 10. tenant to a man, & after by a dede bering a later date, he grāteth the same seruices to another, and the tenant atturneth to the seconde grauntee, nowe the seconde graunt hath the seruice, and though that after the tenant will atturne to the firste grauntee, this is clerely voyde. &c.

Also if a man be seised of maner which maner is parcel in demesne, and parcel in seruice, if he will aliene such maner to an other, yt behoueth that by force of the alienacion, that all the tenātes that holde of the alyenour, as of his manour. &c. attourne to the alienee, or otherwyse the seruices abide cōtinually in the alienour, excepte tenantes at will, for it nedeth not that the tenantes at will attourne vpon such alienacion. &c. for this that the same landes and tenementes that they holde at will, doe passe to the alienee by force of such alienacion.

Also if there be lorde and tenaunt, and the tenant letteth the lande to a man for terme of lyfe, the remaynder to an other in fee, yf the lorde graunte the seruices to the tenaunt for terme of lyfe in fee, in thys case the tenant for terme of life hath fee in the seruices, but seruices be put in suspence, duryng his lyfe, but hys heyres shal haue the seruices after his death, and in ẏ case it nedeth not any attournement for

for by the acceptaunce of the dede of hym that ought to attourne, this is attournement in him selfe. &c. but where the tenãt hath as great and high estate in the tenemẽtes, as the lorde hath in the seignoury in such case if the lord graunt the seruice vnto the tenaunt in fee, this enureth by way of extinguishment, causa patet. Cap. 186.

Also if there be lorde and tenaunt, and the tenãt maketh a lease to one for terme of lyfe, or gyueth the lande in the taile sauing the reuercion attourne to if the lord in suche case graunt the seygnourie to an other, in this case it behoueth that he in the reuercion vnto hym. &c. the grauntee, and not to the tenaunt for terme of lyfe, or the tenant in the tayle for this that he in the reuercion is tenaunt vnto the lord, and not the tenaunt for terme of lyfe, nor the tenaunt in the taile.

In the same maner it is, where there is lorde, mesne, and tenant, and the lorde wyll graunte the seruyces of the mesne, thoughe that he make no mencion of the mesne in his graũt, yet it behoueth ỹ the mesne attourne, &c. & not the tenant peruaile. &c. for thys ỹ the mesne is tenant to him. &c. But otherwise it is, where certain land is charged of a rente charge, or a rente secke: for in suche case if he ỹ hath the rent charge graũt it to an other it be-

Cap.10. houeth ỹ the tenant of the franktenemet attourne to the grauntee, for that, ỹ the franktenement is charged with the rent &c. and in the rente charge none auoury ought to be made vpō any person for the distresse taken. &c. but he shall auowe the takyng good and righteous, as in landes or tenementes so charged to a distresse. &c

Also if there be lorde and tenaunt, and the tenant let his tenementes to an other for terme of life, ỹ remainder to an other in fee, and afterward the lord graunteth the seruices to an other. &c. and the tenant for terme of life attourneth, this is good inough, for this that the tenant for terme of lyfe, is tenaunt in this case to the lorde. &c. & he in the remaynder can not be called tenant to the lorde, as touchyng thys entent, but after the death of the tenant for terme of lyfe. Yet in this case yf he in the remainder dye without heire, the lord shal haue ỹ remainder by way of eschete for this that though the lord in suche case shalbe constrained to auowe vpon the tenāt for terme of life. &c. yet all the hole tenement, as touching all the estates of the franktenement, or of the fee simple, or otherwise. &c. in such case they be together holden of the lorde. &c. but not to make auourie vpon them altogither. Mich. 3. H. 6.

Also if there be lorde and tenant, & the

tenant

tenant letteth the tenement to a womã for terme of life, the remaynder ouer in fee, and the woman taketh a husbande, & after the lorde grauteth the seruices. &c. to the husbande and his heires, in this case the seruice is put in suspence during the couerture. But if the woman die, liuing the husbande, the husbande and his heyres shall haue the rent of them in the remainder. &c. And in this case it needeth not to haue any attournement by worde &c. for this ỹ the husband, which ought to attourne, accepteth the deede of the graũt of the seruices. &c. the whiche acceptaunce is an atturnement in the law. Lay. 102

In like maner it is, if there be lord and tenant, and the tenant taketh a wife and after the lorde graunteth the seruices to the wife, and to her heires, and the baron accepteth the deede. In this case after the death of her husbande, the wyfe and her heyres shall haue the seruices, &c. for by the acceptaunce of the deede by the baron this is a good attournement. &c. albeit that duryng the couuerture, the seruices were put in suspence. &c.

Also if there be lorde and tenante, and the tenant grauteth the tenementes to a man for terme of his life, the remainder to an other in fee, if the lorde graunteth the seruices to the tenaunt for terme of life

Cap. 10. life, in this case the tenant for terme of life, haue fee in ỹ seruices. But ỹ seruices be put in suspence duryng his lyfe. But yet the heyres of the tenant for terme of lyfe, shall haue the seruices after his decease. &c. And in this case there needeth no atturnement, for by the acceptance of the dede of him ỹ ought to atturne, &c. This is atturnement of it selfe, &c. But where the tenant hath as good estate in the tenementes, as the lorde hath in the seygnourie, in suche case if the lorde graunte the seruices on the tenaunte in fee, this shall enure by way of extinguishement, Causa patet.

Also if there be lord and tenant, and the tenant maketh a lese to a man for terme of his life, sauing ỹ reuercion to himself if the lord graunt the seignoury to the tenant for terme of life in fee, in this case it behoueth that he in the reuercion atturn to the tenant for terme of life by force of the same graunt, or otherwise the graūt is voide, for ỹ, that he in the reuercion is tenant to the lorde, &c. and yet he shal not holde of the tenant for terme of lyfe, duryng his life, causa patet.

Also if there be lorde and tenante, and the tenant holdeth of the lorde by twenty maner of seruices, and the lord graunteth his seignourie to an other, if the tenant pay

pay in dede any parcell, or do any of the seruices to the grauntee, ẏ is a good aturnement of lande for all the seruices though ẏ the tenantes entent was to aturne but of the same parcel, for this that the signorie is an whole thinge, thoughe that there be diuers maner of seruices, that the tenantes ought to do. &c. Cap. 100

Also if there be lorde and tenaunt, and the tenaunt holdeth of the lorde by many maner of seruices, and the lorde grauntеth the seruices to an other by fine, if the graunt sue a Scire facias out of the same fine, for any parcell of the seruices, & hath iudgement to recouer, this iudgement is a good attournement in the lawe for all the seruices.

Also if the lorde of a rent seruice, graunt the seruices vnto an other and the tenant atturneth by a peny, & after the grauntee distraineth for the rent behinde, and the tenaunt to him maketh rescous. In this case the grauntee shall not haue assise of the rent, but he shal haue a writte of rescous, for that the gifte of the pente by the tenaunte was but by way of atturnement. But if the tenaunte had giuen vnto the grauntee the sayd pente, as parcel of the rent, or an halfepeny, or a farthing by way of seisin of the rente, then this is a good atturnement, & also it is a

good

Cap. 10. good seysin to the graunter of the rente and then vpon such relcons the graunte shall haue assyse, &c.

Also if there be many ioyntenauntes, whiche holde by certayne seruices, and the lord graunteth vnto an other the seruices, and one of the sayd ioyntenauntes attorneth to the graūtee, this is as good as if all had attourned, for this that the seignourie is whole. Enquire.

Also if a man let tenementes for terme of yeres, by force of whiche lease the lessee is seased, and after the lessour graunted by his deede the reuertion to an other for terme of life, or in tayle, or in fee it behoueth in suche case that ỹ tenant for terme of yeres attourne, or other wise nothynge passeth to suche a graunt by suche a deed. And if in this case the tenaunt for terme of yeres attourne to the grauntee then by and by passeth the franketenemente to ỹ grauntee by suche attournement without any lyuere of seisin, &c. for this that if any lyuere of seysin shall or needeth to be made in suche case then the tenant for terme of yeres shall be at time of ỹ lyuere of seisin out of his possession, whiche should be agaynst reason.

Also if tenementes be let to a man for terme of life, or geuen in ỹ tayle sauing ỹ reuer-

reuerciō.&c. if he in the reuercion graunt the reuercion to an other by hys hede, it behoueth that the tenant of the lande atturne to ẏ graūtee in the life of the grantour, or otherwise the graunt is voyde. Cap.10.

In the same maner it is, if land be giuen in the tayle, or let vnto a man for terme of life the remainder vnto an other in fee if he in the remainder will graunt his remainder to an other.&c. if the tenāt of the land atturne in the life of the graūtour, then the graunt of suche remainder is good, or otherwise not.

Also if lāde be let to a man for terme of yeres, ẏ remainder to an other for terme of lyfe, reseruyng to the lessour a certaine rent by yere, and liuerie of seysin is made vpon this to the tenāt for terme of yeres yf he in the reuercion in suche case grant hys reuercion to an other, &c. and the tenaunt that is in the remaynder after the terme of yeres atturneth, this is a good atturnemente, and he to whome the reuercyon is graunted by force of suche atturnement, shall distrayne the tenant for terme of yeres, for the rent due after such atturnemēt though the tenant for terme of yeres, neuer atturned vnto him, & the cause is for this, that where the reuercion is departed vpon the state of frankete-nement, it suffiseth that the tenant of the

frankete-

Cap. 10. franktenemēt atturne vpon such graunt of reuercion. &c. And it is to wit, ỹ where a lease for terme of yeres, or for terme of lyfe, or a gifte in the tayle is made to any man, reseruyng to suche a lessoure or donour certayn rent, if such a lessour or donour grant his reuercīō to an other, and the tenant of the land atturneth, the rent passeth to the grantee though that in the dede of the graūt of reuercion, no mention is made of the rente, for thys that the rente is incident to the reuercion in such case and not Enconuerse. &c. for if a man wil graūt the rent in such case vnto an other reseruynge to hym the reuercion of the lande, though the tenant attourne to the grauntee, this shalbe a rent secke. &c.

Also if a mā let land vnto an other for terme of lyfe, & after such lease he confirmeth by a dede the estate of the tenant for terme of life, the remainder to another in fee, & the tenāt for terme of life accepteth the dede, then is the remaynder in dede to him, to whom the remaynder was giuen or limitted by the same deede for by the acceptance of the tenant for terme of lyfe of the same dede this is agrement of him, and so an atturnement in law, but yet he in the remaynder shall haue none action of walke, nor other benefite by suche remainder except he haue the same dede in

Dedi & concessi.

hys

his hande, by which the remainder was Cap.10.
graūted vnto him, & for this ỳ in such case
the tenāt for terme of life will retaine to
him the dede, to thentēt ỳ he in ỳ remain-
der shal haue no action of waste agaynst
him for this ỳ he may not come to haue ỳ
possession of the dede. &c. It shalbe good &
a sure thing in such case for him in the re-
mainder, ỳ a deede indented be made by
him, ỳ wil make the confirmatiō, and the
remainder ouer. &c. & that he that maketh
such confirmation, deliuer a parte of the
indenture to the tenant for terme of life,
& the other parte to him that hath the re-
mainder. &c. and than he by shewyng of
the part of the indēture may haue an ac-
tion of waste against the tenant for terme
of life, and all other aduantage that he in
the remainder maye haue in such case.

Also if two ioyntenantes be, which let-
teth land to another for terme of life, yel-
dynge to them and to their heyres a cer-
tayne rente by yeare, in thys case yf one
of the two ioyntenantes in the reuercion
release to the other ioyntenaunte in the
same reuercion, this release is good, and
he to whom the relese is made, shall haue
only the rent of the tenaunt for terme of
life & shal only haue a writ of waste againſt
him, though he neuer atturned by force
of such relese, and the cause is for the pri-

Cap. 10. nitie ỹ ones was betwene the tenants for terme of life, & him in ỹ reuercion.

In the same maner, & for the same cause it is, where a mā letteth land to another for terme of his life, ỹ remainder to another for terme of his life, reseruing ỹ reuercīō to ỹ lessour, in this case if he in the reuercīō, release to him in the remainder. &c. & to his heires al his right. &c. then he in the remainder hath a fee. &c. and shall haue a writ of waste against ỹ tenāt for terme of life, without any atturnement of him. &c.

Also if a lease be made for terme of life, ỹ remainder vnto another in taile the remainder ouer to ỹ righte heires of the tenaūt for terme of life, in this case, if ỹ tenāt for terme of life, graūt his remainder in fee, to another by his dede, this remainder by and by passeth by his dede without any other attournement, & he remaineth tenant of the land, not withstandyng the grant. &c. For if any ought to attourne in thys case, it should be the tenāt for terme of life. And it were in vaine ỹ he should attourne vpon his owne graunt. &c.

Also if there be the lord and tenant & the tenant holdeth of the lord by certaine rēte, & by knightes seruice, if the lords

lord graūt the seruices of the tenante by fine, the seruices be by & by in the grantee by force of the fine, but yet the lorde may not distraine for any parcell of his seruices without atturnement. But if the tenant die his heire beyng within age, the lord shall haue the ward of the body of ỳ heire, and of the lande, &c. how be it that he neuer attourned for this that the seigniorie was in the graunte mayntenant by force of the fine. And also i some cases if the tenant die without heire, the lorde shal haue the tenancy by way of eschete. In the same maner it is if a man graunt the reuercion of his tenant for terme of life to an other by fine, the reuercīō passeth anone to the graunte by force of the fine, but the grantee shal neuer haue action of waste without atturnement, &c. But yet if the tenant for terme of life aliene in fee, the grantee may enter, &c. for this ỳ the reuercion was in him by force of the fine, & suche alienacion was to his disinheritance. But in this case where the lord graunteth the seruices of his tenant by fine, if the tenant die, his heires being of full age the grantee by the fine shall not haue ỳ relese, nor neuer shal distrain for the relief, except there had been an atturnement of the tenāt that died, &c for of suche thinges that lieth in distresse Cap. 9.

Cap. 10. vpon the whiche a writ of Replegiare is sued. &c. a man ought to auow the taking good and rightuous. &c. and there ought to be atturnement of the tenante, how be it that the graunt of suche seruices be by fine. But to haue warde of landes and tenementes so holden, during the nonage of the heire, or them to haue by way of eschete, there needeth not any dystresse &c. but an enter in the land by force of right of the seignory, that the grauntee hath by force of the fine. &c. and so is the diuersitie.

Also if there be lord, mesne, & tenante, & the mesne granteth by fine the seruices of his tenant to another in fee, and after the grantee die without heire, now the seruices of the mesnaltie shal come & be eschete to the lorde peramount by way of eschete if after the seruice of the mesnaltie be behind, in this case be y is lorde peramount may distraine y tenant, notwithstãdinge that the tenant did yet neuer attourne, & the cause is for this, that the mesnaltie was in deede in the grauntee by force of the fine, and the lord peramont might auow vpon the grauntee for this that he was his tenant in deede, all be it that he shall not be compelled, &c. but if the grantour in this case dye without heyre in the life of the grauntee, then he shall be compelled to auow vpon the grauntee, and

alls

also in so much that the lorde peramount Cap. 10.
may not claime the mesnaltie, by force of the graunt made by the fine leuied by the mesne, but by the vertue of the seignourie peramount, by way of eschete, he shall auowe vpon the tenant for the seruices that the mesne had, &c. albeit that the tenant old neuer yet attourne.

In the same maner it is, where the reuertion of the tenant for terme of lyfe is graunted by fine to another in fee, & the grauntee dieth after without heire, nor the lorde hath the reuertion by waye of eschete. And if after the tenãt make wast the lorde shall haue a writte of waste against him, notwithstandynge that he neuer attourned, causa qua supra. But where a man clameth by force of ỹ graunt made by the fine, that is to say, as heyre or assigne. &c. there he may not distraine nor auowe, nor haue action of waste. &c. without atturnement.

Also in auncient borroughes or cities where tenementes within the same borroughes or cities bene deuisable by testament, by ỹ custome, & the vse, &c. if in such borroughe or citie a man be seised of rente seruice, or of rent charg, & he deuiseth such rente or seruice to an other by his testament, and dieth. &c. in this case he to whõ the deuise is made, may distrayne the

Cap. 10. tenant for the rent or the seruice behinde how be it that the tenāt neuer atturned.

In the same maner it is where a man letteth such tenementes diuisables to an other for terme of life, or for terme of yeres, and deuiseth the reuercion by his testament to an other in fee, or in fee tayle and dieth, and anon after that the tenāt maketh waste, he to whom ỹ deuise was made shall haue a writ of waste, howbeit that the tenant neuer atturned, and the cause is for this, that the will of the deuisour made by the testament shalbe perfourmed after the entent of the deuisour, and to the effect of this lieth vpon the atturnyng of the tenant, &c. the percase the tenant would neuer atturne, &c. then the will of the deuisour should neuer be perfourmed, and therefore the deuisee shall distrayne or haue an action of waste, &c. without atturnment. For if a man deuise such tenementes to an other by his testament, habendū sibi imperpetuū, & dieth, and the deuisee entreth, he hath a fee simple, cause qua supra. And yet if a deede of feoffement were made to him by the deuisour of the same tenement, habendum & tenendum sibi imperpetuū, if liuere of seisin were neuer there vpō made he shal haue none estate but for terme of life, &c.

Also if a man seysed of a manoure

whiche

whiche is parcell demesne, and parcel in seruices, & thereof be disseised, but the tenant which holdeth of the manour neuer atturneth to ỳ disseisour in this case how beit that the disseysour dieth seysed. &c. & his heire is in by discent, yet may the disseisee distrayne for the rent being behind & haue the seruice, but if the tenant come to the disseisour, & say, we become your tenãtes. &c. or otherwise atturne to him. &c. and after the disseysoure dieth seysed. etc. thẽ the disseisee may not distrayne for the rent, for this ỳ al the maner descẽdeth to the heire of the disseisour. But if one hold of me by rent seruice, whyche is a seruice in grosse, & not by reason of my manour and another that no right hath, claymeth the same rent, and receiueth and taketh ỳ same rent of my tenant by occasiõ of distresse or by other forme, and so disseyseth me by takynge of suche rente, how be it, that suche a disseysoure dye so seysed by suche takynge of the rente, yet after hys death I may well dystrayne for the same rent beynge behynde, before the death of the disseysour, and after his death, & the cause is for this, that suche is not my disseysour but by electiõ at my will, for how be it that he take the rente of my tenaunt yet I may at all tymes dystrayne my tenant for the rent behinde, &c. so that it is Cap.104

Cap.10. to me, but as I wil suffre the tenāt to be, by as much space of time behind of paimēt to me of ỹ same rēt, for ỹ paymēt of my tenāt to another, to whom he ne ought to pay, is no disseisi to me nor shall not put me out of my rēt, wout my will & electiō, for howebeit ỹ I may haue assise agaynst such a taker. &c. yet this is at my election if I will take him as my disseisour or not, so ỹ suche discentes of rentes in grosse, ne putteth not out the lordes from their distresse, but ỹ at eche time they maye wel distreyne for ỹ rēt behind. &c. And in this case if after the decesse of hym that so wrongfully taketh the rent. I graunte by my dede the seruices to an other, & the tenant atturneth this is good inough, and the seruice by suche graunt & atturnement, incontinēt be in the graūtee. &c. But otherwise it is where the rēt is parcel of ỹ manour & the disseisour dieth seised of the whole manour, as in the case aforesayde.

Also if I be seised of a manour parcel in demesne, & parcell in seruice, and I geue certain acres of land, parcel of ỹ demesne of ỹ same maner to another in the taile, rendryng to me & to mine heyres, a certaine rente. &c. If in this case I be disseised of the manour, & al ỹ

tenantes atturne & pay their rētes to the disseisour, & also the said tenāt in tail pay the rēt by me reserued to the disseisour, & after disseisour die seysed. &c. & his heire entreth, and is in by discēte, yet in this I may after well distraine the tenāt in the tayle, and his heires, for the rente by me reserued vpon the gifte, ỳ is to say, for the rent beyng behinde before the discente of the heyre of the disseisour, and also for the rente, whiche chaūced to be behinde, after the same discente, notwithstandynge the dyeng seised of the disseysour &c. Cap. 103.

And the cause is for this, that when a man geueth tenemētes to an other in the taile, sauing the reuercion to him, and he vpon the said gifte reserueth to him a rent or other seruices, all the rente & the seruices be incident to the reuercion, and whe a man hath a reuercion he can not be put out of his reuertiō by the dede of a straūger, except that the tenaunt be put out of his state and possession. &c. for as long as the tenant in the taile and his heires continue their possession by force of my gifte so longe is the reuercyon in me and my heyres, and in so much that the rent and the seruices reserued vpon suche condicion, be incident and dependante to the reuercion, whosoeuer hath the reuercion, hath the same rente and the seruices. &c.

Cap. 10. In the same maner it is, where I let parcel of ꝑ demesne of the maner, to another for terme of lyfe, or for terme of yere rendrynge to me certayne rente. &c. albeit that I am disseised of the maner. &c. & the disseisoure dye. &c. and his heire is in by discent, yet I may distraine for the rente behinde, notwithstãding such dyscent. vt supra. For when a man hath made such a gifte in the tayle, or such a lease for terme of life, or for terme of yeares, of parcel of the demesne of a maner. &c. sauing the reuercion to suche donour or lessour. &c. and after ward if he be disseysed of the maner &c. suche reuercion after suche disseisin is seuered of the maner in dede, albeit, it is not seuered in right. And so may ye see diuersitie, where there is a maner, parcell in demesne, and parcell in seruices, the which seruices be parcel of the same maner, not intidente to anye reuercion. &c. or where they be incidẽt to a reuercio. &c.

Discontinuance. Cap. xi.

Discontinuãce

DIscontinuãce is an auncient worde in the law, and hath diuers significatiõs. &c. But as to one entent it hath such a signification, that is to saye, where a mã hath aliened to another certaine landes or tenementes, and dyeth, and another had ryghte to haue the same lãdes or tenementes, but he may not enter

ter in them bicause of such alienacion &c. Cap.ii.

As if an abbot be seised of certaine landes and tenementes in fee, & he alieneth the same landes and tenementes to another in fee, or in fee tayle, or for terme of life, & the abbot dieth, his successour may not enter in the same landes or tenementes, how be it that he haue right to haue them, as in the right of his house, but he is put to his action to recouer the same landes or tenementes, whiche is called a writ De in gressu sine assensu capituli.

Also if a man be seised of lande, as in the right of his wife, &c. & thereof enfeoffeth another, &c. and dieth, the wife ne may not enter, but she is put vnto his action, the which is called Cui in vita. &c.

Also if the tenant in tayle of certayne lande, en feoffe another therof. &c. & hath issue & dieth. &c. his issue may not enter in the lande, how be it that he hath right and title therto, but is put to his action, that is called Formedon in descender.

Also if there be tenant in the tayle and the reuercion is to the donour and to his heires, if the tenãt make a feoffement, &c and dieth without issue, he in ỹ reuercion may not enter, but is put to his action of Formedone in the reuerter.

And in the same maner it is wher the tenant in the taile of certaine land is seised

Cap. 10. sed, wherof the remaynder is to another in the taile, or to another in fee, if the tenant in the tayle alieneth in fee, or in fee tayle. &c. and after dieth without issue, they in the remaūder may not enter, but be put to their writ of Formedone in the remainder, &c. And for this that by force of such feoffement and suche alienacions in the cases aforesayde, and in other lyke cases, they which haue title and right after the death of suche a feoffour, or alienour, may not enter, but be put to their actions vt su. therfore suche feoffementes & alienacions be called discontinuances.

Also if tenant in the tayle be disseysed and he releaseth by his deede to the disseysour and to his heires al the right that he hath in the same lande, this is no discontinuance, for this that nothinge of right passeth to the disseisour, but for terme of lyfe of the tenant in the tayle that made the release. &c. But by the feoffemente of tenant in the tayle a fee simple passeth by the same feoffement by force of a liuere of seisen, &c. but by force of a release nothyng passeth, but the right that he may lawfully and rightfully release without hurt or damage to other persons, which therto to haue right after his deceasse. &c. and so it is a greate diuersitie betweene a feoffement of the tenaunte in the tayle

and

and a release made by the tenant in the tayle. But it is said, ẏ if tenant in ẏ taile in this case release to the disseysour and bindeth him and his heires, to warrantise, &c. and dieth, and in this warrantie descendeth to his issue, then that is a discontinuance, because of the warrantee, &c. But if a man haue issue a son by his wife, and his wyfe dieth, and after he taketh another wife, and the tenement be giuen to him and his second wife, and to the heyres of their two bodies engendred and they haue issue another son, & then the second wife dieth, and after the tenāt in the tayle is disseysed, and he releaseth to his disseysour al his right. &c. and byndeth him and his heires vnto warrantise and dieth, this is no discontinuāce to the issue in the tayle by the second wife, but he may well enter, &c. for this that the warrantie descended to his elder brother that his father had by his first wife, &c. Cap. 10.

In the same maner it is, where tenementes be discendable to the yonger son after the custome of borough Englyshe, which ben tailed. &c. and the tenant in the taile hath issue two sonnes, and is disseised, & he releseth to his disseisour all his right with warrātise, & dieth, the yonger son may enter vpon the disseisour notwstanding the warrantise, for this that the war-

Cap. 11. warrantise discendeth to the elder son, for alway the warrantise descendeth &c. to him that is heire by the common law.

Also if an abbot be disseised, and he releaseth to the disseysour with warrantise this is no discontinuance to his successor for this ỹ nothing passeth by his release but the right ỹ he hath duryng the tyme that he is abbot, and this warrantise is expired by his privation, or by his death. Also if a man be seysed in right of his wife, and is disseised, and he releseth &c. with warranty this is no discontinuāce to the wife, if she survyue her husbande, but that she may entre, &c. causa patet.

Also if tenaunt in the tayle be seised of certaine lande, and he letteth the same lande to another for terme of yeres, by force of which lease the lesse is no possession, and after the tenant in the tayle by his deede releseth all his right ỹ he hath in the same lande, to haue and to holde to the lessee, and to his heires for euer, this is no discontinuance, but after ỹ decease of the tenaunt in the tayle his issue may well enter, for this that by suche release nothyng passeth but for terme of life of the tenant in the tayle.

In the same maner it is, if the tenant in the tayle confirme the estate of the lessee for terme of certaine yeres, to haue and

to

to hold to him & to his heires, this is a discontinuance, for this that nothyng passeth by such confirmacion, but the estate that the tenant in the tayle had for terme of his lyfe. &c. Cap. 11.

Also if ẏ tenāt in taile after such lease graūt the reuerciō in fee by his dede to another, & will, ẏ after the terme finished, that the same lād remayne to the grauntee, & to his heyres for euer, and the tenāt for terme of yeres atturneth this is no discōtinuāce. For such thinges which passe in such cases fro ẏ tenāt in taile only by way of graūte, or by confirmacion, or by release, maye passe nothing to make estate to him, to whom ẏ graūt or confirmacion, or relese is made, but only ẏ, that the tenāt in the taile may rightfully doe, & ẏ is but for terme of his life. &c. For if I let land to a mā for terme of his life. &c. & the tenāt for terme of life, let the same lād to another for terme of yeres. &c. & after my tenāt for terme of lyfe graūt the reuerciō to another in fee, & the tenāt for terme of yer? atturneth, in this case ẏ graūtee hath not in ẏ frāktenement estate, but for terme of the life of his grātour. &c. & I ẏ am in the reuercion of ẏ fee simple, may not enter by force of ẏ graunt of the reuerciō made

Cap. 11. by my tenāt for terme of life, for the
by such graūt my reuercion is not dis-
cōtinued, but alwaies it abideth to me
as it was before, notwithstāding such
graūt of ỹ reuercīō made to ỹ grātee,
to him & to his heires. &c. for this ỹ no-
thing passeth by force of such graūte,
but ỹ estate ỹ the graūtour hath. &c.

In the same maner it is, yf ỹ tenant
for terme of life by his dede cōfirme ỹ
estate of his lessee for terme of yeres, to
haue & to hold to him & to his heires or
release to his lessee & his heires, yet ỹ
lessee for terme of yers hath not estate
but for terme of ỹ life of the tenant for
terme of life. &c. But otherwyse it is
whē a tenāt for terme of life, maketh a
feoffemēt in fee for by suche feoffemēt
ỹ fee sīple passeth. For tenāt for terme
of yers may make a feoffemēt in fee, &
by his feoffemēt, ỹ fe sīmple shal passe
& yet he had not at ỹ time of ỹ feoffemēt
made, but only estate for terme of yers

Also if the tenant in taile, graūt his
lād to another for terme of life of the
same tenant in taile, & liuery of seisīn
to him is made. &c. & after by his dede
releaseth to the tenant & to his heires,
al the right ỹ he hath in the same land
in this case the estate of ỹ tenāt of the
lande

lande is not enlarged by force of such re- Cap.11.
lease, for this that when the tenant hath the estate in the land for terme of the life of the tenant in taile, then he hath all the right that the tenant in taile might right fully graunt or release, so that by such release no right passeth, in so much that his right was gone before.

Also if tenaunt in the tayle by his dede graunte to an other all his estate that he hath in the tenementes intayled to hym to have and to holde all his estate to the tother, and to hys heyres for ever, and deliuereth to him seisin accordyng. In thys case the tenant, to whome the alienacion was made, hath none other estate but for terme of life of the tenaunt in tayle. And so it may well be proued, that the tenant in the tayle may not graunt ne aliene ne make any rightful estate of the frankestenement to an other person, but for terme of his own life, &c. For if I giue certaine lande in the taile to a man, sauing the reuercion to me, and after the tenant in the taile enfeoffeth another in fee, the feoffee hath no ryghte estate in the tenementes for two causes. One is for that by suche feoffement, my reuercio is discontinued which is a wrong act, and not a rightful acte. An other cause is, if the tenaunt dye and his issue sueth a writ of Formedon

Cap. 11. againſt the feoffee, the writ ſhal ſay, and alſo the declaration ỹ the feoffee wrongfully him deforced, &c. Ergo if he of wrong him deforced, &c. he had no right eſtate.

Alſo if lande be let to a man for terme of hys life, the remaynder to an other in tayle, yf he in the remaynder wil graunt his remaynder, to an other in fee by hys deede and the tenaunte for terme of lyfe atturneth, this is no diſcontinuance of the remaynder.

Alſo if a man hath rent ſeruice, or rent charge in tayle, and he graunteth the ſayd rent to an other in fee, and the tenant atturneth, this is no diſcontinuance. &c.

Alſo yf a man be tenant in the taile, of auouſon in groſſe, or of cõmõ in groſſe if he by his deede will graunt the auouſon or the common to an other in fee, this is no diſcontinuãce, for in ſuch caſes ỹ grauntee hath no eſtate but for terme of lyfe of ỹ tenant in the taile, that made the graũt &c. Note well that ſuche thynges as paſſe by way of graũt by deede, made in the cõtre without liuere there. &c. ſuche graunt maketh no diſcontinuance, as in ỹ caſes aforeſayd or in other like. &c. and how be it that ſuch things be graunted in fee, by fine leuyed in the kynges courte. &c. yet this maketh no diſcontinuance. &c.

Alſo if I giue lande to an other in the tayle

tayle, and he letteth the same lande to an- Cap. 11.
other for terme of yeres, and after the les-
sour graunteth the reuercion to an other
in fee, & the tenour for terme of yeres at-
turneth to the grante, & the terme is ex-
pired during the life of the tenãt in taile
by the which ỳ graunte entreth, & after
the tenant in tayle hath issue and dieth,
in this case this is no discontinuance, not
withstanding ỳ the grant was executed
in the life of the tenant in tayle, for this
that at the time of the lese made for terme
of yers, no new fee simple was reserued
in the lessour, but the reuercion abideth
in him in the tayle, as it was before the
lese made. But if the tenãt in taile make
a lease for terme of lyfe of the lessee. &c. in
this case the tenaunt in the tayle hath
made a new reuercion of fee simple in
him, for this that when he made a lease
for terme of life. &c. he discontinued the
tayle by force of the same lease, and also
he discontinued my reuercion &c. and it
behoueth that the reuercion of the fee sim
ple be in some person in such case, and it
may not be in me, which am donour, in
so much ỳ my reuercion is discontinued,
ergo it behoueth that the reuercion of the
fee be in the tenant in the tayle, that dis-
continued my reuercion by suche lease,
&c. And if in this case the tenaunte in

Cap. 11. in the tayle, graūt by his deed the reuer-
cion in fee to an other, and the tenaunte
for terme of life attorneth. &c. and after
the tenant for terme of life dieth, liuinge
the tenaunt in the tayle, and the graūtee
of the reuercion entreth. &c. in the lyfe of
the tenant in the tayle, then this is a dis-
continuaunce in fee, & if after the tenant
in the tayle dieth, his issue may not enter
but he is put to his writ of Formedone,
and ỳ cause is for this, that he that hath
the graunt of such reuercion in fee symple, hath the seisin and execution of the
same landes and tenementes, to haue to
him and to his heires in his demesne as
of fee, in the life of the tenant in tayle, &
And this is by force of the same graūte
of the tenaunt in tayle. &c.

In the same maner it shalbe, if in the
case aforesaid, the tenant for terme of life
after the attornement of the graūtee had
alienes in fee, & the graūtee had entred
by forfayture of his estate; and after the
tenant in tayle had died, this is a discon-
tinuance, causa qua supra. But in this
case if tenant in taile, ỳ graunted the re-
uercion, &c. die, liuing ỳ tenant for terme
of life, and after the tenant for terme of
lyfe dieth, & after he to whom the reuer-
cion was graunted entreth. &c. then this
is no discontinuāce, but ỳ the issue of the

tenant

tenant in the tayle may well enter vpon the grauntee of the reuercion, for this ỳ the reuersion ỳ the grauntee hath, was not executed in the life of ỳ tenãt in taile &c. And so there is great diuersity, when the tenant in the tayle maketh a lese for terme of yeres, & wher he maketh a lease for terme of life, for in thone case he hath reuercion in the tayle, & in the other case he hath a reuercion in fee. For if lande be giuen to a man & to his heires males of his body engendred, the which hath issue ii. sonnes, and the elder son hath issue a doughter & dieth, and the tenant in tayle maketh a lese for terme of yeres, & dieth, now the reuercion discendeth to the yonger son for this ỳ the reuercion was but onely in the tayle, & the yonger sonne is heire male. &c. but if the tenant in tayle had made a lease for terme of life, &c. and died, now the reuercion descended to the doughter of the eldest sonne, for this that the reuercion is in fee simple, & the doughter is heire generall. &c. Cap. 11.

Also if a man be seised in taile of landz deuisables by testament, &c. and he deuiseth this to an other in fee, and dieth and the other entreth, &c. this is no discõtinuance for this ỳ no discõtinuãce was made in the life of the tenant in the tayle. &c.

Also if lande be giuen in tayle, saueng

Cap. 11. the reuercion is to the donour, and after the tenant in tayle by his deed enfeoffeth the donour in the same land to haue and to holde to him and to his heires for euer and deliuereth to him seysin according, &c. this is no discontinuance, for this that none may discontinue the state in ỹ taile if that he do not discontinue the reuercio of him, which had it in the reuercion, &c. or in the remainder, if any hath it in the remainder, &c. And in so much ỹ by suche feoffement made to the donour the reuercion then beyng in him, his reuercion is not discontinued nor altered, &c. this feoffement is no discontinuance, &c.

In the same maner it is, where land? be giuen to a mā in tayle, the remainder to an other in fee, and the tenant in taile enfeoffeth him, which is in the remaynder, to haue and to holde to him & to his heyres, this is no discontinuance, causa qua supra. &c.

Also if an abbot haue a reuercion or a rent seruice, or rēt charge, & wyll graunt one of thē to an other in fee, & the tenante attourneth, &c. this is no discontinuance.

In the same maner it is where an abbot is seased of auouson, or of suche thinges that passe by way of graunt without liuere of seysin, &c.

Also if there be grandfather, tenant in the

the taile, father and son, and the graund- Cap.iii
father is disseised by the father, and the fa
ther maketh a feoffement in fee without
warrantise and dieth, and after the grād
father dieth, the son may wel enter vpon
the feoffe, for this ỳ this was no disconti-
nuance, in so muche ỳ the father was not
seised by force of the tayle at the tyme of
the feoffemēt. &c. but was seysed in fee by
the disseisin made to the graūdfather. &c.

And it is to be knowen, that there be
some discontinuances for terme of life, as
if tenaunt in taile make a lease for terme
of lyfe, sauynge the reuercion to hym, as
longe as the reuercion is to the tenant in
taile, or his heyres, it is no discontinuāce
but during the life of the tenant for terme
of life. &c. And if such tenant in taile gyue
the tenemētes to an other in taile sauing
the reuercion, then thys is a dyscontinu-
ance during ỳ second taile. &c. But where
the tenāt in tayle maketh a lese for terme
of yeres, or for terme of lyfe, the remain-
der to an other in fee, and delyuereth ly-
uery of seisin accordyng, this is discontī-
nuance in fee, for thys that the fee simple
passeth by force of the liuery of seysin. &c.
And it is to wit that some suche discontī-
nuances be made vpon condicion. &c. and
for thys ỳ the condicions be broken. &c. or
for other causes after ỳ course of the lawe

Cap. 11. such estates be defeted, then be the discōtinuaunces defeted, & doe not take away any man by force of them frō hys entre, as if a husband be seised of certaine lande in ryght of hys wyfe, and maketh a feoffement in fee vpon condicion, and dieth, if the heyre after enter vpon the feoffe for the condicion brokē, the entre of the wife is lawful vpon the heyre, for this that by the entre of the heyre, the discontinuance is defeted, as it is adiudged.

Also if a woman inherited, take an husband, which husband is within age, and the husband maketh a feoffement in fee, of the tenementes of the wyfe, and dieth, it hath bene questioned if the wyfe maye enter or not. And it semeth to some mē, ẏ the enter of the wife after the death of her husband shalbe leful in this case, for whē the husband made suche a feoffement. &c. he mighte well entre notwithstandynge suche feoffement durynge the couerture, and he might not entre in his owne right but in the right of his wife. &c. Ergo such right that he had to entre in the righte of hys wife. &c that righte of entre abydeth to the wife after his decease.

And it hath ben sayd, ẏ if two ioyntenātes beyng within age make a feoffement in fee, & one of the children dieth, & that other suruiueth, in so much that

that both children might enter iointly in their liues, this right of entre groweth all to him that suruiueth, and so he maye entre into ỳ whole. &c. but the heire of the husband that made the feoffement with in age maye not entre. &c. for this that no right descendeth to suche an heyre in the case aforesayd, for this that the husbande had neuer any thynge but in the right of hys wife. &c. And also when a childe maketh a feoffement beyng within age, this shal neuer greue nor hurt hym, but that he maye well entre. &c. for thys should be against reason, ỳ such a feoffement made by him, that was not able to make such a feoffement, shall greue or hurte an other to tolle them of their entrees. &c. And for these causes it semeth to some, that after the death of suche an husbande so beynge within age at the time of the feoffement. &c. that his wife may well enter. &c. Cap. iii

Also yf a woman inheritrice taketh an husbande, and hath issue a son and the husbande dieth, and she taketh an other husbande, and that seconde husbande letteth the lande, that he hathe in the ryghte of hys wife, to an other for terme of hys lyfe, and after the wyfe dieth, and after the tenaũt for terme of life surrẽdreth his estate to ỳ seconde husbãd. &c. Enquire if the son of ỳ wife may enter or

Cap. 11. not in thys case vpon the second husbande durynge the lyfe of the tenaunt for terme of lyfe.&c. But it is clere lawe, that after the death of the tenant for terme of lyfe, the sonne of the wyfe may wel enter, for this that the discontinuaunce that was made all onely for terme of lyfe is determyned by the death of the same tenaunt for terme of life.&c.

Also it is to be knowen, that an estate tailed, may not be discontinued, but where he ỳ made the discontinuance was once seysed by force of the tayle, so that it be not by reason of warrantie. As if there be graundfather, father and sonne, and the graundfather is tenant in tayle, & is disseased by the father which is his son, and the father maketh a feoffemente of thys without warrantie, and dieth, and after the grandfather dieth, the son maye well enter vpon the feoffee, for thys that thys is no discontinuance, in so much that the father was not seysed by force of the taile at the time of the feoffement.&c. but was seysed in fee, by the disseysin made to hys graundfather.&c.

Also yf tenante in tayle make a lease to another for terme of life, & the tenaunt in taile hath issue & dieth, and the reuercion descendeth to hys issue & after the issue graunteth the reuercion in hym

him descended to an other in fee, and the tenant for terme of life attorneth, &c. & is seysed in fee, in the life of the issue, and afterward the issue in the taile hath issue a son and dieth, it semeth that this is no discontinuance to the son, but ỳ the sonne may enter, &c. for this that his father to whom the reuercion of the fee simple descended. &c. had not at any time any thing in the lande by force of the tayle, &c. For if a man seased in right of his wife, let ỳ same lande to an other for terme of his lyfe, now is the reuercion of the fee simple in the husband, &c. and if the husband die, liuing the wife, and the tenaunt for terme of life, and the reuercion descendeth to the heire of the husbande, and he graunteth the reuercion to an other in fee, and the tenant attourneth, and after the tenant for terme of life dieth, and the grauntee of the reuercion entreth in this case this is no discontinuance to the wife but the wife may well enter vpon the grauntee, &c. for this ỳ the grauntour had nothinge at ỳ time of the graunte in the right of his wife, when he made the graũt of ỳ reuercion. & thus it semeth though ỳ mẽ which be inheritable by force of the taile were neuer seased by force of ỳ same taile, ỳ yet such feoffementes or grauntes by them made Cap. II.

wyth-

Cap. 11. without cause of warrantie, is no discõtinuãce to their issues, after their decesse, but that their issues may well enter, &c. although that they whiche made suche grantz in their liues, were forbarred to enter by their owne deede, &c.

And if tenant in tayle hath issue two sonnes, and the eldest disseyseth his father, and maketh a feoffement in fee wt out clause of warrantie, and dieth without issue, and after the father dieth, ẏ yonger son may well enter vpon the feoffee for this that the feoffement of his elder brother can not be discontinued, for this that he was neuer seysed by force of the tayle. For it seemeth against reason, that by a matter in deed, &c. without clause of warrantie, that a man may discontinue a tayle, &c. whiche was neuer seysed by force of the same tayle.

In the same maner it is if a man make a lease for terme of life, the remainder to an other in tayle, and he in the remaynder disseiseth the tenaunt for terme of lyfe, and maketh a feoffement to an other in fee, and dieth, and after ẏ tenant for terme of life dieth, it seemeth in this case, that he in the reuercion may well entre vpon the feoffee, for this ẏ he in the remaynder, whiche made ẏ feoffemente, was neuer seysed in the tayle by force of

the

the same remaynder. &c. Cap. 11.

Also if there be lorde and tenante, and the tenant giueth the tenementes to an other in tayle, and after ẏ tenant in taile maketh a lease to a man for terme of life &c. sauynge the reuercion. &c. and after graũteth the reuercion to an other in fee & the tenant for terme of lyfe atturneth, &c. and after the graũtee of the reuercion dieth without heire, now the same reuercion commeth to the lorde by way of eschete. If in this case the tenant for terme of lyfe dieth, and the lorde by force of his eschete, entreth in the life of the tenant in tayle, and after the tenant in taile dieth, it seemeth in this case, that this is no discontinuance to the issue in the tayle nor to him in the remainder but that he may well enter, for this that the lorde is in by way of eschete, and not by the tenant in the tayle. &c. But it shuld be otherwise, if the reuercion had been executed in the grauntee in the life of the tenaunt in the tayle, for then had the grantee ben in the tenementes by the tenant in the taile, &c.

Also if the person or vicare of a churche aliene certain landes or tenementes parcel of his glebe. &c. to an other in fee, and dieth, or resineth. &c. his successour may wel enter, notwithstãdyng such alienacion, as it is saide in An. 2. H. 4. termino

Michae-

Cap. xi. Michaelis, quod sic incipit: Nota quod dictū fuit pro lege, in a writ of accompte brought by the mayster of a tolledge, against a chapleine, that if a person or a vicar graunt certain lands that is of the right of his church, to an other, and dieth or chaungeth, that his succeſſour mai enter. And I think that the cauſe is for this, that the person or vicar that is ſeaſed, &c. as in ȳ right of his church, hath no right of fee ſimple in the tenementes, and the right of the fee ſimple of this abideth in any other person. And for this cauſe his ſucceſſour may well enter, not withſtādyng ſuch alienacīō, &c. for a biſhop may haue a writ of right of tenementes of the right of his biſhoprīche, for this that the right of fee ſimple abideth in him & his chaplen. And a dean may haue a writ of right. &c. for this that the right abideth in him and his chapiter, and an abbot may haue a writ of right for this ȳ the righte abideth in him and in his couente. And a mayſter of an hoſpitall maye haue a writte of righte, for this that the ryght abydeth in him, and in his cobrethren, &c. Et ſic de aliis in caſibus conſimilibus &c. But a perſonne or a vicar may not haue a wryt of ryghte, &c. but the highest wrytte that they may haue is a writ De iuris vtrum, the whiche is a greate

proſe

proke, that the right of fee simple is not in them, nor in no other. &c. but the right of fes simple is in abiance, that is to saye all onely in the remembraunce, extendement, and consideracion of the lawe, &c. for me semeth that such a thyng in such a right, that is sayd in diuers bokes to be in abiance is as much to say in latin s. talis res vel tale rectum, que vel quod non est in homine, ad tunc superstite, sed tantūmodo est, & consistit in consideracione & intelligenci legis. &c. & quidā alii dixerunt talem rem aut tale rectū fore in nubibus. &c. But I suppose that then vnderstand by these wordes in nubibus. &c. as I haue sayd before.

Cap. xi.

Fee simple in abiance.

Also if a personne of a churche dye, nowe the franketenement of the glebe of the personage is in no man, durynge the tyme that the personage is voyde, but is in abiance that is to saye in consideracion and intelligence of the lawe tyll an other be made person of the same churche and immediatly when an other is made personne, the franketenement in dede is in him as successour.

Also some men peraduenture will argue and say, that in so much that the personne with the assent of the patrone and ordinarye maye graunte a rente charge out of the glebe of hys personage in fee,

and

Cap. xi.

and so charge the glebe of the personage perpetually, ergo they haue fee simple, or two, or one of theym hathe fee simple, at the least. &c. To this it may be aunswered that it is a principle in the lawe, that of euery lande there is a fee symple in some mã, or els the fee simple is in absance. &c. And an other principle is, that euery lãd of fee simple. &c. maye be charged with a rent charge in fee, by one waye or by an other, &c. & when suche rente is graunted by the dede of the parson, and the patron and the ordinary in fee, none shall haue no preiudice or losse by force of such grant but the grauntoures in their liues & the heires of the patron, & the successours of the ordinarie after their deceases, & after suche charge, if the parson dye, his successour maye not come to the sayd church to be personne of the same churche by the lawe but by presentment of the patron, and admission and institution of the ordinarye. &c. And for this cause it behoueth that the successour holde hym content and agreed with that which his patron and ordinarie lawfully haue done before. &c. But thys is no proofe, that the fee simple. &c. is in the patrone and the ordinary, or in anye of them. &c. but the cause that suche rente charge is good, is for thys, that they which had entrees, &c.

in

in the sayd church, that is to saye, the pa- Cap. 11.
tron after the lawe temporal, and the or-
dinary after the lawe spirituall were as-
sented, or parties vnto suche a charge. &c.
and thus semeth the very cause that suche
glebe may be charged in perpetuity.

Also if tenant in the taile hath issue and is dissesed, & after by his deede, he releaseth all his right to the disseisour, in thys case no right of taile maye be in the tenãt in tayle, for this ỹ he hath releſed all hys right, & no right maye be in the issue in ỹ tayle, duryng the life of his father, & such right of inheritance in the taile, is not all vterly expired by force of such release. &c. ergo it behoueth that such right abide in abiance. &c. vt supra, during the life of the tenant in tayle whiche releſed. &c. and after his deceale, then is such right maintenable in the issue in dede. &c.

In the same maner it is where tenant in tayle grauteth al his estate to another in thys case the grantee hathe not estate but for terme of life of the tenãt in taile, and the reuertiõ of the tayle is not in the tenant in tayle, for this ỹ he hath graunted all hys estate of his right. &c. And yt the tenaunt, to whome the graunte was made, make waſt, the tenãt in taile shall neuer haue a writ of waste, for this that no reuersion is in him, but the reuersion

Cap. 12. and the inheritãce of the talle, during ỹ life of the tenãt is in abiãce, ỹ is to say, onely in the remembrance, cõsideracion, & intelligence of the law.

Also if a bishop aliene lãdes which be parcel of his bishoprich, & dieth, this is a discõtinuãce to his successour for thy ỹ he maye not entre, but is put to hys writ de ingressu sine assẽsu capituli. &c

Also if a deane aliene lãde, parcell of his deanery, & dieth, his successour ne may not enter but he may haue a writ de ingressu sine assẽsu episcopi & capituli. &c. But if the deane & the chapiter haue lãd to thẽ, & to their successors in cõmon. &c. howbeit ỹ the deane aliene such lãdes his successours may wel enter, for this ỹ the franktenement at ỹ time of ỹ alienaciõ was aswel in ỹ chapiter, as in ỹ deane. But where ỹ dean is sole seised, as in right of his deanrie then such alienacion is a discõtinuãce to his successour as it is aforesayd.

Also somemen wil argue & say, ỹ if an abbot & his couẽt be seysed in theyr demesne as of fee, of certaine lande to them & to their successours. &c. and the abbot without assẽt of his couẽt, alieneth the same lãd vnto an other, & dieth, this is a discontinuãce to his successours

cessours, &c. and by the same reason they will say, that where a deane and chapiter be seised of certaine landes to them & to their successours, if the deane alien the same landes, &c. this shalbe a discontinuance to his successours, so ỳ his successour may not enter. &c. to this may be answered, that there is great diuersitie betwen the sayd two cases. For when the abbot and the couent be seysed. &c. yet if they be disseised, the abbot shal haue assise in his owne name, without nampyng of his couent. &c. And if a man will sue a Precipe quod reddat, of ỳ same landes when thei be in the handes of the abbot and his couent: it behoueth that such an action real be sued against the abbot onely without nampyng of the couent, &c. for this that al they bene dead persons, in the lawe, saue onely the abbot ỳ is soueraigne, &c. and this is because of the soueraintie, &c. for els he should be as one of the other monkes of the couent, &c. But the deane and the chapiter be no dead persons in the law, &c. For eche of them haue an action by him selfe in diuers cases, and of suche landes or tenementes whiche the deane and chapiter, haue in common. &c. if they be disseised, the deane & the chapiter shal haue assise, & not the deane alone &c. and if an other will haue an actiõ real Cap. 12.

Cap.12. of such landes or tenementes against the deane.&c.it behoueth him to sue agaynst the dean and chapiter,& not against the deane alone.&c.& so it appereth great diuersitie betweene these two cases.&c.

Also if the maister of an hospital discontinue certaine lande of his hospitall, his successours may not enter, but he is put vnto his writ. De ingressu sine assensu cōfratrū & cōfortorū.&c.and al such writtes do plainly appere in the register.&c.

Also if lande be let to a man for terme of his life, the remaynder to an other in the tayle, sauynge the reuercion to the disseisour, and after he in the remaynder disseiseth the tenant for terme of life, and maketh a feoffement to another in fee, & after dieth without issue, and the tenant for terme of life dieth, it seemeth in this case, that he in the reuercion may well enter vpon the feoffee, for this that he in the remainder that made the feoffement, was neuer seised in the tayle by force of the same remainder.&c.

Remitter. Cap.xii.

Remitter is an aūcient terme in ẏ law, and it is where a man hath two titles to landes or tenements that is to say, one of an elder title, and an other of a latter title, and he commeth to the lande by the latter title, yet the law adiudgeth

adiudgeth him to be in, by force of the elder title, for this that the elder title is the more sure title, and the more worthy title, and then when a mā is iudged in by force of the more elder title, this is vnto him sayde, a remitter, for this ỳ the law shall admitte him to be in the lande, by the elder title. And if the tenant in the tayle discontinue the tayle, and after he diseyseth his discontinue, and so dieth seised wherby the tenementes descend to his issue or cousin inheritable by force of the tayle, in this case, this is to him, to whom the tenementes descende whiche hath right by force of the taile, & remitter in the tayle, for that, ỳ the law shall put and adiudge him to be in by force of the tayle, whiche is his elder title, for if he shalbe in by force of the discent, then the discontinue may haue a writ of entre vpon the disseisin in the per against him, & recouer the tenementes and his damages, &c. But in so much that he is in his remitter by force of the tayle, the title & the interest of the discontinue is al vtterly annulled, and defeated, &c. Cap. 12.

Remitter by reason of discent.

Also if tenant in the tayle enfeoffe his son or his cousin inheritable by force of the tayle in fee, the whiche son or cousin at the time of the feoffemente is within age, and after the tenāt in the taile dieth

Cap. 12. and he to whom ỹ feoffement was made in his heire by force of the title in ỹ tayle this is a remitter to the heire in the taile to whom the feoffement was made. For how be it, that duryng the life of the tenant in the tayle, ỹ made the feoffement, such heyre shalbe adiudged in byforce of the feoffement, yet after the death of the tenant in the tayle, the heire shall be adiudged in by force of the tayle. &c. and not byforce of the feoffement, for though that suche an heire was of ful age at the time of the death of the tenant in the tayle, ỹ made ỹ feoffement, this maketh no matter, if the heire were within age, at the time of the feoffement made to him. And if such an heyre beyng within age, at the time of the feoffement, commeth to full age, liuyng the tenaunt in tayle ỹ made the feoffement, and so being of ful age, he chargeth by his deede the same land wᵗ a commō of pasture, or with a rent charge and after the tenaunt in the tayle dieth, now it seemeth ỹ the lande is discharged of the common and of the rente, for this that the heyre is in by an other estate in the lande, then he was at the time of the charge made, in so much that he is in his remitter by force of the tayle, and so the estate that he had at the tyme of ỹ charge is vtterly defeated

Also

Also a principal cause is, why suche an heyre in the cases aforesayd, and other cases semblable shalbe said in his remitter, is for this, that ther is no person against whō that he may sue his writ of Formedone, for against himself he may not sue, & he may not sue agaynst none other, for none other is tenant in the franketenement, & for that cause the lawe adiudged him in his remitter, that is to say, in such plite, as if he had lawfully recouered the same lande agaynst another. &c. Cap. 12.

Also if lād be tailed to a mā & his wife, & to the heyres of theyr two bodies engendred, the whiche haue issue a doughter, & the wife dieth, & the husband taketh another wife, & hath issue another doughter of his body, & discontinueth the tayle, and after he disseiseth the discontinue, & so dieth seysed, now the lande descēdeth to the two doughters in this case, as to the elder doughter ỳ is inheritable by force of the tayle, this is a remitter but of the halfe, and as to the other halfe, she is put to her action of Formedone agaynst her sister. For in this case the two sisters be but tenauntes in parcenary but the tenauntes in commō, for this that they be in diuers titles. For the one sister is in, in her remitter by force of the tayle: as to that, ỳ vnto her belongeth. And the other sister

Tenantes in cōmon by discent where as auncester dyeth seised.

Cap. 12. is in, as to ꝑ ꝑ belongeth to her in fee ſimple by the diſcent of her father. &c.

In the ſame maner it is, if ꝑ tenant in the tayle enfeoffe his heire apparãt in ꝑ taile being the heyre within age, & another ioyntenaunt in fee, and the tenãt in the tayle dieth, now the heire in the taile is in his remitter as to the halfe, & as to that other halfe he is put to hys writ of formedone. &c.

Alſo if tenãt in the taile enfeoffe his heire apparãt, ꝑ heyre being of ful age at time of the feoffement, & after the tenãt in ꝑ taile dieth, this is no remitter to the heyre, for this ꝑ it was his own folye ꝑ he beyng of ful age would take ſuch feoffement. &c. But ſuch folye may not be adiudged in ꝑ heire being with in age at ꝑ time of the feoffement. &c.

Alſo if tenant in the taile enfeoffe a woman in fee and dieth, and his iſſue within age taketh the ſame womã to wife, that is a remitter to the childe, & the wyfe then hath nothyng for this that the husbande and ꝑ wife ben but one perſon in the lawe. And in ꝑ caſe the husband maye not ſue a writte of Formedone, but if that he will ſue againſt himſelf, ꝑ which ſhalbe incõuenient, & for that cauſe the law iudgeth

the

the heyre in the remytter, for this that no folly may be arrected to him being within age at tyme of the spousels, &c. And yf the heyre be in hys remytter by force of the taile, it folowyth by reason, that the wife hath nothing. &c. for in so much ỹ the husband and the wyfe be but one person, the lande maye not be seuered by halfes, and for thys cause the husbande is in hys remitter of the hole. But otherwise it is, if suche an heyre be of ful age at time of the spousels, for then the heyre hath nothyng but in the ryght of hys wyfe. &c. Cap. 12.

Also if a woman seysed of a certaine lād in fee taketh an husband, the whiche alieneth the same land to another in fee, and the alience lettethe the same lande of the husbande and the wife, for terme of their two liues, sauyng the reuertiō to the lessour, & to his heyres, in thys case the wyfe is in her remitter, & she is seysed in deede in her demeane as of fee, as she was before, for this ỹ the taking of estate shalbe adiudged in the law the dede of ỹ husbād & not the dede of the wife, so ỹ no folly may be iudged in the wife, ỹ is couert in suche case. And in this case the lessour hath nothing in the reuertiō, for this ỹ the wife is seised in fee. &c. But in thys case, if the lessour will sue an action of wast against the husbād and Remitter by reason of the lese in feoffee.

Cap. 12. his wife, for this ẏ the husbande hath made wast, ẏ husbād may not barre ẏ lessour, for to shew this ẏ the takyn[illegible] of estate made vnto him, & to his wife which maketh a remitter to hys wyfe for this ẏ the husbād is stopped to say this ẏ is agaynst his feoffement & hys owne reprisel of estate for terme of life to him & to his wife, & yet the lessoure hath no reuerciō, for this ẏ the fee simple is in the wife. And thus a mā may see a matter in this case ẏ a man shal be stopped by a matter in dede though no wryting by dede indented, or other wise, be therof made. But if an action of wast, ẏ husband make defaut at the grād distresse, & the wife prayeth to be receyued, & is receyued, she shall well shew al the matter, and how she is in her remitter, & she shal barre ẏ lessour of his action. &c. for in euery case ẏ the wife is receiued for defaute of her husbād, she shal pleade, & haue the same auātage in pleading as she were a woman sole. &c. And how be it ẏ the alienee made the lease to the husband and his wife by dede endēted, yet this is a remitter to ẏ wife. And also though ẏ aliene yelded ẏ same lande to the husband and his wife by fine for terme of

Estoppel by a matter in dede

Collusion abhorred in the law

theyr

theyr liues, yet this is a remitter to the wife for this ỳ the wife couert ỳ taketh eſtate by fine, ſhall not be examined by the Iuſtices, &c. Cap. 12.

And beare note well that when any thyng ſhall paſſe fro the wife that is couert barō by force of a fine, as if the huſband and his wife make a conſiaunce of right to another, &c. or make a graunt or a ſurrender to another, or releſe by a fine to another: ⁊ ſic de ſimilibus, where the right of the wife paſſeth from the wyfe by force of the ſame fine, the wife in all ſuche caſes ſhalbe examined before that the fine be accepted, for this ỳ ſuche fines conclude ſuch wiues couerte for euer. &c. But where nothing is moued in the fine but all only ỳ the huſbande and the wyfe take eſtate by force of the ſame fine, that ſhall conclude the wife, for this that in ſuch caſe ſhe ſhall neuer be examined. &c.

Alſo if tenant in the tayle diſcontinue the tayle, and hath iſſue a doughter, and dieth, and the doughter being of full age taketh an huſbande. and the diſcontinue maketh a leaſe of this to the houſbande and his wife, for terme of theyr lyues, this is a remitter in deede to the wife, ⁊ the wife is in by force of the tayle. Cauſa qua ſupra. &c.

Alſo if lande be giuen to the huſbande ⁊ his

Cap. 12. his wife, to haue and to holde to them & to the heires of their two bodies begotte, and after the husband alieneth the lande in fee, and taketh again an estate to him and to his wife for terme of theyr two liues, in this case this is a remitter in deed to the husbād & his wife maugre the husbande: for it may not be a remitter in this case to ỳ wife except it be a remitter to the husbande, for this ỳ the husbande & his wife be but one self person in the law though that the husbande is stopped to clame. And for this, this is a remitter to him against his alienacion, & his owne repriſell as it is afore ſayde.

Also if land be giuen to a woman in ỳ tayle, the remainder to another in the tayle, the remaynder to the thyrde in the tayle, the remaynder to the fourth in fee & the wife taketh an husband, & the husbande diſcontinueth the land of the wife by this diſcontinuāce al the remaynders be diſcontinued. For if the wife die without iſſue they in the remainder ſhal haue no remedy, but to ſewe their writtes of Formedone in the remaynder, whē they come to their time. But if after ſuch diſcontinuance, eſtate be made to the husbande & his wife, for terme of theyr two liues, or for terme of anothers lyfe, or another eſtate, &c. for this that this is a remitter

mitter to the wife. This is also a remitter to all them in the remaynder, &c. for after this ỳ the wife that is in her remitter dieth without issue, they in ỳ remainder may enter, &c. without any action or suite. &c. In the same maner it is of them whiche haue the reuercion after suche tayles. &c. Cap. 12.

Also if a man let a house to a woman for terme of her life, sauing the reuercion to the lessour, and after one sueth a faint and false action against the woman and recouereth ỳ house against her by default so ỳ the woman may haue against him a writ Quod ei deforciat, after the statute of westm. the seconde. cap. 4. now is the reuercion of the lessour discontinued so ỳ he may haue no action of waste.

But in this case if ỳ woman take an husband, and he ỳ recouereth letteth ỳ house to the husband and to his wife for terme of their twoo liues, there the wife is in her remitter by force of the firste lease. Remitter by reason of recouerie.

And if the husbande and the wife make waste, the first lessour shal haue agaynst the a writ of waste, for this, ỳ in so much ỳ the wife is in her remitter, he is remitted to his reuercion. But it seemeth in this case, if he ỳ recouereth by the false action, will bring an other writ of waste agaynst the husbande & his wife, or the husband

Cap. 12.

husband hath no remedy agaynst him, but to make defaute at the great distresse &c. and to cause the wife to be receyued, and to pleade the matter agaynst the seconde lessour, and to shew ỳ the action, by which recouered, was false and fained in the lawe, and so the wife may barre him. &c.

Also if the husband discontinue the lande of his wife, & after taketh again estate to him and to his wife, and to ỳ thyrde person for terme of their liues, or in fee, this is no remitter to the womã, but as to the moytie. And as for the other moyty it behoueth her after the death of her husband to sue a writte of Cui in vita. &c.

Also if the husband discontinue the lãd to his wife, and goeth ouer the sea and ỳ discontinue letteth the same lande to the woman for terme of her life, and delinereth to her seisin, and after the husbande commeth and agreeth to the liuery of seisin, this is a remitter to the woman, & yet if the woman had ben sole at ỳ time of the lease made to her, this should be to her a remitter, but in somuch as she was couert baron at the time of the lese, and of ỳ liuery of seisin made to her, though that she onely tooke the liuery of seysin, this was a remitter to her, because a womã couert shalbe adiudged as an infant,

within

within age, in suche case. &c. Enquire in this case, if the husband when he cõmeth againe from beyond see, if he wil disagre to the lease and linery of seysin made to hys wyfe in his abiance, if thys shall put the woman fro her remitter or not. &c. Cap.12.

Also if the husbande discontinue the tenementes of his wife, & the discõtinue is disseised, & after the disseisour letteth the sayd tenementes to the husband and hys wife for terme of life, this is a remitter to the wife: but if the husband & the wife were so couin and consent, that the disseisin should be made then it is no remitter to the wife bycause she is a disseisoresse. But if the husbãd were of couin & consent to the disseysin, and not to the wyfe, then such lease made to the wife is a remitter, bycause that no defaute was in the wife.

Also if suche a discontinue had made estate of freholde to the husbande and to hys wife by dede indented vpon condicion. & reseruing to the discõtinue a certain rente, and for defaute of payment of the rente a reentre, and bycause that the rent is behynde, the discontinue entreth, then of this entre the woman shal haue assise of nouell disseysin after the death of the husbande agaynst the discontinue, bycause that the condicion was wholy annulled, in so much as the woman

Cap.12. mā was in her remitter, yet ẏ husbād with his wife coulde not haue assyse, bycause the husband is stopped, &c.

Also if the husband discontinue the tenemētes of his wife, & taketh estate again to hī for terme of his life, the remainder after his decease to his wyfe for terme of her life, in thys case thys is no remitter to the wife, duryng the life of her husbande, because ẏ duryng the life of the husbande, the wife hath nothing in the freholde, but if in thys case ẏ wife ouer liue the husbād, thys is a remitter to the wife, bycause ẏ a freehold in law is fallē to her, mauger her will. And in so much ẏ she cā haue no actiō agaynst none other person, & agaynst her self she can haue no actiō, therfore she is in her remitter. For in this case thoughe ẏ the woman enter not in tenementes, yet a straunger ẏ hath cause to haue actiō, may sue hys action against the woman of the same tenemētes, bicause she is tenāt in law though she be no tenāt in dede, for tenant of franketenement in dede is he, ẏ if he be disseysed of his franke tenement, he maye haue assyse, but tenant of freeholde in law before his entre in dede, shal haue no assyse, and if a man

seased

sealed in fee of certaine lande hath issue a sonne, whiche taketh a wife, and the father dieth seysed, and after the sonne dyeth, before any entre made by him into y lande, the wife of the son shalbe endowed in the lande as is afore saide in the chapiter of releases, & yet he had no franke tenement in dede, but he had a free and a franketenement in law. And so note wel that a Precipe quod reddat maye as well be mayntained agaynste him, that hathe franketenement in law, as agaynst hym that hath franketenement in dede. Lay. 12.

Also if the tenant in the tayle haue issue ii. sonnes of full age, & he letteth the tayled lande to the elder son, for terme of hys lyfe, the remaynder to the yonger son for terme of his life, & after the tenant in the taile dieth. In this case the elder sonne is not in his remitter because that he toke estate of his father, but yf the elder sonne dye without issue of his body, the thys is a remitter to the yonger brother because he is heire in the taile, & franketenement in law is fallen vpon him, by force of the remaynder, and there is none agaynste whome he may sue his action &c.

In the same maner it is, where a man is disseised, & the disseisour dieth there of seysed, & the tenemētes discende to his heire, & the heire of the disseysour maketh a lese

Cap. 12. to a man of the sayd tenemētes for terme of lyfe, the remainder to the disseisee for terme of life, or in tayle, or in fee, and the tenant for terme of life dieth, now this is a remitter to the disseisee.

Also if tenant in the tayle enfeoffe his son, and an other by his deede of the sayd lande in fee, and liuerye of seysin is made to the other, accordyng to the deede and the sonne not knowyng thereof, nor agreeyng to the feoffemente, and after he that toke the liuerye of seysin, dieth, and the son occupieth not the land, nor taketh any profite of the lande, durynge the lyfe of his father, and after the father dyeth, now this is a remitter to the son, bicause that the freeholde is fallen to hym by the survivour, and no default was in hym bycause he neuer agreed &c. in the lyfe of hys father, and there is none agaynste whome he may pursue his writ of forme done. &c. for if a man be disseysed of certayne lande, and the disseysour maketh a dede of feoffement, wherby he enfeoffeth B. I. and D. and the liuerye of seysin is made to B & I. but D. was not at the liuerye of seysin, nor neuer agreed to the feoffemente, nor neuer would take the profytes. &c. and after B. and I. dye, and D. ouerliueth them, & the disseysee bryngeth his writ vpon disseysin in the yeare

againſt the ſame D. he ſhall ſhew all the matter, & how that he neuer agreed to ỹ feoffement, and ſo he ſhall diſcharge him ſelfe of domage ſo that the demaundant ſhall recouer no domage agaynſte him though ỹ he be tenant of franktenement of the land. And yet the ſtatute of Glocester cap. 1. will ỹ the diſſeiſee ſhal recouer domages in a writte of entre, grounded vpon the nouell diſſeiſin againſt him ỹ is founde tenant. And this is a proufe in the other caſe, ỹ in ſo muche as the iſſue in the tayle commeth to the franketenement, and not by his deede nor by his agreement but after the death of his father this is a remitter to him, in ſo muche ỹ he can not ſue an action of Formedon agaynſt none other perſon. &c. Cap. 12.

Alſo if an abbot alien the lande of his houſe to an other in fee, and the aliene by his deede chargeth the land with a rēt charge in fee, and after the aliene enfeoffeth the abbotte with licence to haue and to holde to the abbotte and to his ſucceſſours for euer, and after the abbot dieth, and an other is choſen and made abbot. In this caſe the abbotte that is the ſucceſſoure, and his couente be in theyr remitter, and ſhall holde the lande diſcharged becauſe that the ſame abbot can not haue any action of writte of entre Sine

Cap. 12. assensu capituli of the same lands against none other person,

In the same maner it is, where a bysshop or a deane, or other such persons alien, &c. wout assent, &c, & the aliene chargeth the land. &c. and after the bishop taketh estate againe of the said land by licence to him & to his successours, & after the bishop dieth, his successour is in his remitter, as in right of his churche and shal defete ỳ charge, &c. causa qua supra.

Also if a mā sue a false action agaynste the tenant in the tayle, as if a man will sue agaynst him a writte of entre in the Post, supposing by his writ, that the tenaunt in the taile, had not this entre but by J. of B. that dissessed the grandfather of the demaundant, and ỳ is false, and he recouereth against the tenaunt in the tayle by default, and sueth execution, and after the tenaunt in the taile dieth, his issue may haue a writte of Formedon against ỳ recouered, & if he will pleade the recouere against the tenant in the tayle, the issue may say, ỳ the sayd J. of B. dissessed not the graundfather of him that recouered in the maner, as his writ supposeth, and so he shall falsifie his recouerie. Also suppose that this was true, that the sayd J. of B. disseysed the graundfather of the demaundant ỳ recouered, and

that

that after the disseysin, the demaundant Cap.12.
or is father, or his graundefather by a
deede had releaſed to the tenaunt in the
tayle, al the right that he had in the land
&c. and this notwithſtandyng he ſued his
writ of entre in the poſte againſt the te-
nant in the tayle, in the maner as is a-
forelayd, and the tenant in the taile plee-
deth to him, that the ſaid A. of B. diſſeiſed
not his graundefather in the maner as
his writ ſuppoſeth, and vpon this they be
at iſſue, and the iſſue is founde for the de-
maundant, wherby he hath iudgemente
to recouer: and ſueth execution, and after
the tenãt in the tayle dieth, his iſſue may
haue a writ of Formedon againſt him ỳ Fauters
recouered. And if he wil pleade the reco- de recoue-
uere by action tried againſt his father ỳ rer par
was tenaunt in the tayle, then he may faine plee
ſhew and pleade the releaſe made to his
father, and ſo the action that was ſued,
was layne in the law. &c.

And it ſemeth ỳ faint action is as muche Faint ac-
to ſay in Engliſhe a fayned action, that tion.
is to ſay, ſuche action, that thoughe the
wordes of his writ be true, yet for cer-
tayne cauſes he hath no cauſe nor title by
the law to recouer the ſame action. And Falſe ac-
falſe action is where the wordes of the tion.
writ be falſe, and in the two caſes before
layde, if the caſe were ſuche, that after
ſuch

Cap. 12. such a recouere & execution thereof made, the tenant in the tayle had disseysed him that recouered, and thereof died seysed, wherby the land also descended vnto his issue, this is a remitter vnto the issue, & the issue is in by force of the tayle and for that cause I haue put these two cases beforesaide, to enfourme thee my sonne, ẏ the issue in the tayle, by force of a discent made to him, after a recouere and execution made against his auncester, may be as wel in his remitter as he should be by his dissente made to him after a discontinuance made by his auncester of the tailed landes by feoffement in the countrey or otherwise, &c.

Also in the same case aforesayde, if the case were suche, that after this, that the demaundant had iudgement to recouer against the tenant in the tayle, & ẏ same tenant in the tayle died before any execution had against him, whereby the tenementes descende to his issue, and he that recouered, sued a Scire facias out of the iudgemente, to haue execution of the iudgement against the issue in the tayle the issue shal pleade the matter as before is sayde, and so shal proue ẏ the recouery was false or faynte in the law, & so shall barre him to haue execuciō of the iudgement, &c.

Also

Also if tenaunt in the taile discontinue the taple, and dyeth, & hys issue bryngeth a writ of Formedone against the discontinuee beyng tenant of the freholde of the lande, and the discontinuee pleadeth, that he is not tenant, or other wise disclaimeth in the tenaucy, in this case the iudgemet shalbe, that the tenant goe without day, and after such iudgement the issue in the taile, that is demaũdant may well enter in the lande, notwithstandynge the discontinuance. And by such entre he shalbe adiudged in his remitter, and the cause is for this, that where any mã seweth a præcipe quod reddat, agaynst any tenant of freholde, in which action the demaundant shall not recouer damages, & the tenaunt pleadeth no tenure, or otherwise disclaymeth in the tenauncie, the demaundant maye not auerre hys writ and saye, ỳ he is tenaũt, as the writ supposeth. And for ỳ cause the demaũdant after ỳ that iudgement is geuen, that the tenant shall goe without day may enter into the tenementes demaunded, the which shalbe as great aduantage to him in the law as if he had iudgemente to recouer against the tenãt. And by such entre he is in his remitter by force of the taile, but where the demaundaunte recouereth damages against the tenant, the Lap.12.

Cap. 12. in this case the demaundant may auerre that he is tenant as the writ supposeth, & is for the aduantage of the demaundante for to recouer his damages, or els he shal not recouer his damages, the whiche damages be or were gyuē hym by the law.

Also if a man be disseyled, & the disseysour die, hys heire beyng in by discente, now the entre of the disseysee is taken away. And if the disseysee brynge his writ of entre vpon the disseysin in the per a gaynst the heyre, & the heyre disclaymeth in the tenaūcy &c. the demaūdant maye auerre his writ, that he is tenaunt as the writ supposeth, yf he will, for to recouer hys damages. But yet if he will leaue the auerrement &c. he maye lawfully enter in to the land, bycause of the disclaymer, not withstandyng that hys entre before was taken away. And that was adiudged before my mayster syr Roberte Dāby, late chiefe Iustice of the common place, and hys companions &c.

Also where the entree of a manne is lawful, though that he take estate to him when he is of ful age for terme of lyfe, or in taile, or in fee, this is a remitter to him if such takyng of estate be not by dede endented, or by matter of recorde, that shall conclude or estoppe hym. For if a man be disseyled and thereof taketh estate of the dissey-

disseysour without deede or by deede pol, this is a good remitter to the disseysee &c. Cap.12.

Also if a man let lande for terme of life to another, the whiche alyeneth to another in fee, & the alyenour maketh estate to the lessour, this is a remitter to the lessoure, bycause hys entre was lawfull &c.

Also if a man be dysseysed, and the disseysour letteth the land to the disseysee by dede poll, or without deede for terme of yeares, wherby the disseysee entreth, this entre is a remitter to the disseysee, For in such case where the entre of a mā is lawfull, and a lease is made to hym, thoughe ẏ he clayme by wordes in the countrey that he hathe estate by force of suche lease or sayeth opēly, that he claimeth nothing in the land, but by force of suche lease, yet thys is a remitter to him, for such claime in the coūtrey is nothing to purpose, but if he clayme in any courte of record, that he hath estate but by force of suche lease & not other wyse, then he is concluded &c.

Also if two ioyntenantes seised of certayne lād in fee, the one beyng of ful age, the other within age, be disseysed, and the disseysoure dieth seysed, and hys issue entreth, the one of the ioyntenantes beyng then within age, and after ẏ he commeth to ful age, the heyre of ẏ disseisour letteth the lāde to the same ioyntenantes Estoppel.

Cap.xii. for terme of theyr two lyues, this is a remitter as to the halfe to him ỹ was within age, bycause ỹ he is seysed of the moytie that belongeth to hym in fee, bicause his entre was lawful. But the other ioint tenãt hath in the other half but an estate for terme of hys life by force of the lease bycause his entre was taken away. &c.

Warrantie. Cap. xiii.

IT is commonlye sayde, that there be thre maner of warrãties, that is to say warrantie lyneall, warranty collateral, and warranty that beginneth by disseysin. And it is to wit, that before the statute of Glouceſter cap. 3. all warrantyes whiche descended to them whiche were heyres to them that made the warranty, were barres to the same heyres to demaunde any lãdes or tenemẽtes against those warranties, except the warranties that began by disseysin. For such warrãtie was neuer barre to the heyre, bycause the warrantie began by wrong, that is to say, by disseysin.

Warrãty that beginneth by disseysin.

Warranty that beginneth by disseysin is in suche forme, as where there is father & sonne, and the sonne doeth purchase lande. &c. and letteth the same lande to hys father for terme of yeares, and the father by his dede thereof enfeoffeth another in fee, and byndeth hym and his heyres

heyres to warrantie: if the father die Cap.13.
wherby the warrantie descendeth to his
sonne, this warrantie shal not barre the
son for not withstanding this warranty
the sonne may well enter into the lande
or haue an assise against the alienee if he
wil, because the warranty began by disse-
ysin. For when the father that had no
estate, but for terme of yeres made a fe-
offement in fee, this was a disseysin to
his sonne of the franketenement, ẏ then
was in the sonne.

In the same maner it is, if the son let
vnto the father the lād to hold at wil & af-
ter the father maketh a feoffement with
warrāty, &c. & as it is said of ẏ father so it
may be sayd of euery other auncestor, &c.

In the same maner it is, if tenant by e-
legit, tenāt by statute marchāt, or tenant
by statute staple, make a feoffemēt in fee
w̄ warrāty, &c. this shal not barre ẏ heire
ẏ ought to haue the lande because ẏ suche
warranties begin by disseysin.

Also if wardeine in chiualrie, or war-
dein in socage, make a feoffement in fee,
or in fee taile, or for terme of life w̄ war-
rantie. &c. such warrāti⁹ be no barres to
the heires to whom the land shal descend
because that they begin by disseisin.

Also if the father & the sonne purchase
certaine landes or tenementes, to haue &

to

Cap. 13. to holde to them ioyntly. &c. and after the father alieneth the whole to another, & bindeth him and his heires to warrantie &c. and after the father dieth, this warranty shal not barre the sonne of ỳ moity that belongeth to him of the same landes or tenementes, because that as to that moytie, ỳ belongeth the sonne, the warrantie began by desseysin.

Also if A. of B. be seised of a mese, & F. of B. that hath no right, entreth into the same mese, claiming to hold ỳ same mese to him and to his heires, but the sayde A. of B. then is continually dwelling in the same mese, in this case the possession of ỳ franktenemẽt shalbe alway adiudged in A. of B. & not in F. of B. because that in such case, where two be in one mese or in other tenementes, and the one claymeth by one title, and the other by another title, there the lawe shall adiudge him in possession that hath right to haue the possession of the same tenement. But in the case aforesayde if F. of B. make a feoffement of certayne barretours & extorcioners in the countrey for to haue maintenaunce of thẽ, to haue the same mese by a deede of feoffement w̃ warrãty, by force of which the sayd A. of B. dare not dwell in ỳ same mese, but goeth out of the same mese this warranty beginneth by disseisin

ſin, becauſe that ſuch a feoffemente was cauſe that the ſayde I. of B. forlooke the poſſeſſion of the ſame meſe. &c. Cap. 13.

And ye ſhall note, that where one hauyng no right to enter in an others tenementes, doth enter into the ſaid tenemẽtes, & incõtinent maketh a feoffement to other perſons by his deede wᵗ warrantie & deliuereth them ſeiſin, this warrantie begynneth by diſſeiſin, becauſe ẏ the diſſeiſin & the feoffemente were made as it were at one time, and ẏ this is lawe, ye may ſe in a plee. An. 31. E. 3. in a writte of Formedon in the reuercion. Maximel

Warrantie lineall is where a man ſeiſed of certayne land in fee maketh feoffemẽt by his deed to an other, & bindeth him and his heirs to warrantie, and hath iſſue, & dieth, and the warrantie deſcendeth to his iſſue, this is a lineal warrantie. And the cauſe why this is a lineal warrantie, is not becauſe ẏ the warrantie deſcendeth from the father to his heire, but the cauſe is for this cauſe, ẏ if no ſuche deede with warranty had beene made by the father, then the right of the tenementes ſhould diſcende to the heyre, and the heyre ſhould conuey the diſcent from the father, &c. Warrantie lineall.

For if there be father & ſonne, and the ſon purchaſe tenementes in fee, & the father diſſeiſeth ẏ ſonne thereof, & alieneth

it

Cap. 12.

it to an other in fee by his deede, and by the same deede bindeth him & his heyres to warrant the same tenementes, &c. and the father dieth, now is the sonne barred to haue the saide tenementes, for he may by no suite, nor by no other mene by the law haue the sayde tenementes, because of the saide warrantie, for this is a collaterall warrantie, and yet the warrantie descended lineally from the father to the son. But because ẏ if no suche deede with warranty had ben made, ẏ son in no maner might conuey the title ẏ he hath in ẏ tenementes from his father to him, in so muche that his father had no estate nor right in the tenementes: therefore suche warrantie is called collateral warranty in so much that he ẏ made the warranty is collateral to the title of the tenement, and that is as muche to say, that he to whome the warrantie descended, could not conuey the title ẏ he had in the tenementes by him ẏ made the warrantie, in case ẏ no such warrãtie had be made.

Collateral warrantie.

Also if there be graundfather, father and son, and the graundfather is disseysed in whose possession the father releaseth by his deede with warrantie, &c. and dieth, and after the graundfather dieth, now is the son barred to haue the tenementes by the warrantie of his father

and

and this is called lineall warrantye, by- Cap.13.
cause that if no suche warrantie had bene made, the son mighte not haue conueyed the righte of the tenementes to hym, nor shew how he is heire to the graundfather but by the meanes of the father.

Also if a man haue issue two sonnes, & is disseysed, and the elder sonne releaseth to the disseysour by his deede, with warrantie. &c. and dieth without issue, and after the father dieth, this is a lineall warrantye, to the yōger son, bicause ẏ though the elder son died in the life of the father yet by possibility he mighte be his heyre, and he myghte conuey to hym the title of the lande by his elder brother, yf no suche warrantye had bene made. For it might be, ẏ after the death of the father the elder brother entred into the tenementes & dieth without issue, and then the yonger son shall conuey to him ẏ title by hys elder brother. But in this case if ẏ yonger son release with warrantie to the disseysour, & dieth wout issue, this is a collateral warrantie to the eldest son, bicause ẏ of such lāde as was to the father the elder brother by no possibility mighte couey to him ẏ title by meane of the yōger brother

Also if the tenant in the tayle haue issue thre sonnes, and discontinue the taile in fee, and the middle sonne releaseth

by

Cap. 132 by hys deede to the diſcontynuè, and bindeth hym and his heires to warranty and after the tenãt in the tayle dieth, and the middle ſon dieth without iſſue, nowe is the elder ſon barred to haue any recouery by a writ of Formedone, bycauſe ỳ the warranty of the middle brother is collateral to him, in ſo much ỳ he may by no maner clayey to him by force of the tayle, any diſcent by the middle brother, & therfore it is a collaterall warrantie. But in this caſe yt the elder brother dye without iſſue, nowe the yonger brother maye well haue a Formedone in the deſcender, & recouered the ſame lãde bycauſe ỳ the warrantie of the middle brother is lineall to the yõgeſt brother bicauſe it may be, that by poſſibility the middle brother might haue ben ſeaſed by force of the tayle after the death of the elder brother, and then might the yongeſt brother conuey hys title of diſcent by the middle brother.

Alſo if tenant in the tayle diſcontinue the tayle and hath iſſue, and die, and the vncle of the iſſue releaſe to the diſcontynue with warrantie, &c. and dieth without iſſue, thys is a collaterall warranty to the iſſue in the tayle, bycauſe that the warrantye deſcendeth vppon the iſſue, whiche can not conueye hym ſelfe to the tayle, by meane of hys vncle.

Alſo

Also if the tenant in the tayle haue issue two doughters & dieth, and the elder doughter entreth into the whole, & therof maketh a feoffement in fee with warrātye. &c. and after the elder doughter dieth without issue: in thys case ỹ yōger doughter is barred as to the one moity, & as to the other moity she is not barred, for as to the moity that belōgeth to her selfe, she is barred, bicause that as to the moity she can not conney the discent by the meane of her elder sister, and therfore as to that moyty, this is a collateral warranty, but as to the other moyty, which belonged to her elder sister, the warranty is no barre to the yonger sister, bicause that she may conney her discent, as to that moyty that belonged to her elder sister, by meane of the elder sister, and so as to that moyty that belonged to the elder sister, the warranty is lineal to the yonger sister. &c. Lap. 13.

And note wel, that as to hym that demaundeth fee simple by any of his ancestors, he shalbe barred by all lyneal warrantie, which descendeth vppon hym, except it be restrayned by some statute, yet he that demaundeth fee tayle, by a writ of Formedone in the descender, shall not be barred by a lyneall warranty, excepte he haue inoughe by discente in fee simple by the same ancester, that made the warranty

Cap. 13. rantie. But a collaterall warrantie is a barre to him that demaundeth fee & also to him that demaũdeth fee tayle, without any other diſcẽt of fee ſimple excepte in caſes that be reſtrayned by the ſtatutes, & other caſes for certaine cauſes, as ſhalbe ſayd hereafter.

Alſo if land be geuen to a man, & to his heyres of the bodye begotten, the which taketh a wife, & haue iſſue a ſon betwene them, & the huſband diſcontinueth the tayle in fee, & dyeth, & after the wife releaſeth to the diſcõtinue in fee with warranty. &c. & dieth and the warranty deſcẽdeth to the ſon, this is a collaterall warrãty, but if tenemẽts be gyuen to the huſband and the wife & to the heires of their two bodies begotten, which haue iſſue a ſon and the huſband diſcontinueth the tayle, & dyeth, & after the wife releſeth with warrãtie & dieth, this warrãtie is but a lineal warrãty to ỹ ſon for the ſon ſhal not be barred in the caſe to ſue his writ of formedon, except he haue inough by diſcent in fee ſimple by his mother, becauſe ỹ their iſſue in a writ of formedon ought to cõuey to him ỹ right as heyre of his father, & to his mother of their. ii. bodies begottẽ by fourme of ỹ

gifte.

gifte. And so in such case the warranty of the father, & the warranty of the mother be but as lineal warranties to ỹ heire. &c Cap. 13.

And note well that in euery case where a man demaũdeth tenementz in fee taile by a writ of Formedon, if any of the issue in the taile that had possession or that had no possession, make a warrantie, &c. if he that sueth the writte of Formedon might by any possibilitie by matter that might be in deede, conuey to him the right by him ỹ made the warranty by the fourme of the gifte, &c. this is a lineall warranty and not a collaterall. &c.

Also if a man haue issue three sonnes & he giueth lande to the eldest sonne, to haue and to holde to him & to his heires of his body begotten, and for defaulte of suche issue, the remainder to the middle sonne, to him and to the heires of his bodie begotten, and for defaut of suche issue the remainder to the yongest sonne, and to ỹ heires of his body begotten: in this case if the eldest sonne discontinue the taple in fee, and bind him and his heires to warranty, and vse without issue, this is a collaterall warrantie to the middle son, and he shalbe barred to demaund the same land by force of the remaynder, by cause that the remaynder is his title and his eldest brother is collaterall to that

Cap. 13. title, which beginneth by force of the remaynder.

In the same maner it is, if the myddle sonne had the same lande by force of the remaynder, bicause ỹ his eldest brother made no discontinuance, but died without issue of his bodie, and after the middell son maketh a discontinuance w̄ warranty, &c. & dieth without issue this is a collaterall warranty to the yongest sonne, & also in this case if any of ỹ sayde sonnes be disseysed, & the father ỹ made the gifte, release to the disseysour all his right, &c. with warrātie, this is a collaterall warranty to that son, vpon whome the warranty descended, causa qua supra And so note wel. that where a man that hath collaterall title, and his father releeseth with warrantie, this is a collaterall warranty. &c.

Also if the Father geue lande to his elder sonne, to haue and to holde to him & the heyres males of his body begotten, ỹ remaynder to the seconde son, &c. if the eldest brother alien in fee with warrantie. &c. and hath issue female and dieth without issue male, this is not a collaterall warranty to the seconde sonne, nor shall not barre him of his action of Formedone in the remaynder, because that the warrātie descendeth to the doughter

of

of the eldeſt ſonne, and not to the ſeconde ſonne, For euery warranty ỹ diſcendeth deſcendeth to him that is heire vnto him which made the warranty by the common law, &c. Cap. 13.

Alſo if lande be giuen to a man, and to his heires males of his body begotten, & for defaut of ſuch iſſue, ỹ remainder therof to his heirꝛ femalꝛ of his body begottē & after the donee in ỹ taile maketh a feoffement in fee, wᵗ warranty according, & hath iſſue a ſon and a doughter, & dieth, this warranty is but a lineal warrantie to the ſonne to demaunde by writ of formedon in the diſcender, & it is but lyneal to the doughter, to demaunde the ſame lande by writte of Formedone in the remainder, if her brother die without heire male, becauſe ỹ ſhe claimeth as heire female of the body of her father begotten. But in this caſe if her brother in his lyfe releaſe to the diſcontinue. &c. with warrantie, &c. & after die without iſſue, this is a collateral warranty to the doughter becauſe that ſhe cannot conuey to her the right that ſhe hath by force of ỹ remaynder by any meane of diſcente by her brother, for this that the brother is collaterall to the title of his ſiſter, and therfore his warranty is collaterall. &c.

Alſo I haue hard ſay, that in the time

Cap. 13. of kyng Richard the second, there was a Justice of the common place dwellynge in kent, called Rykhyl, that had issue diuers sonnes, and his entent was that his eldest son shoulde haue certaine landes & tenementes to him, and the heires of his body begotten, and for defaute of issue ỳ remainder to his second son. &c. and so to the thirde son, &c. And because ỳ he would that none of his sonnes should alienе or make warranty for to barre or to hurte the other that should be in the remainder &c. he caused to be made an indenture to suche effect, this is to say, that the landes and tenementes were giuen to the eldest sonne vpon this condicion, ỳ if the eldest sonne alienеd in fee, or in fee tayle, &c. or if any of his sonnes alienеd, &c. that then their estate should cease, and shoulde be voyde, and that then the sayd landes, and tenementes immediatly should remaine to the second sonne, and to the heyres of his body begotten, and that vpon ỳ same condicion s. that if the seconde sonne alien, &c. that then his estate should ceasse, and that then the same landes and tenementes shoulde remayne to the thyrde sonne and to the heyres of his bodie begotten, and so forth the remaynder to other of his sonnes, & liuery of seisin was made according. But it semeth by reason

that

ẏ al such remainders in the forme before Cap.13.
sayd be voyde, & of no value, and that for
thre causes. One case is for thys, ẏ euery
remainder, that beginneth by a dede, it be
houeth that the remaynder be in hym, to
whom the remainder is tailed by force of
the same dede, when the lyuerie of seysin
is made to him that hath the franketene-
ment, for in such case the beyng & not be-
yng of the remainder, is by liuere of sey-
sin made to him, which shal haue ẏ frāk-
tenement, and such remainder was not
to the seconde son at the time of liuere of
seysin, in the case before sayde, &c. the se-
cōd cause is if the firste son aliene the te-
nementes in fee, then is the franketene-
ment and the fee simple in the alienee, &
in none other, and if the donour had any
reuercion by such alienacion, the reuerci-
on is discontinued, then though that by
some reson, it may be ẏ suche remainder
shall begynne his beynge and hys grow-
ynge immedyately after suche alienaci-
on made to a straunger, that hath by the
same alienacion franketenement and fee
simple. And also if such remainder should
be good, then moghte he enter vppon the
alyenee, where he had no maner of right
before the alienacion, whiche shoulde be
inconuenient. The thirde cause is when
the condicion is suche, that if the eldest

Cap. 13. ſon aliene. ꝛc. that his eſtate ſhal ceaſe or ſhalbe voide. ꝛc. then after ſuch alienacion. ꝛc. may the donoure enter by force of ſuch condicion. ꝛc. as it ſemeth & ſo the donour, or his heyres in ſuche caſe ought more ſoner to haue the lād then the ſecond ſonne ẏ hath no ryght before ſuch alienacion. ꝛc. and ſo it ſemeth that ſuch remainders in the caſe before ſaid be voyde. ꝛc.

Alſo at the cōmon law before the ſtatute of Glocester cap. 3. if tenant by ẏ curteſie had alienedin fee with warrāty, after his deceaſe, this was a bar to ẏ heire. ꝛc. as it appeareth by ẏ wordes of ẏ ſame ſtatute. But it is remedied by ẏ ſame ſtatute, ẏ the warrātie of the tenaūt by the curteſie ſhalbe no bar to ẏ heyre, except he haue inoughe by diſcēt by the tenant by the curteſie, for before ẏ ſayde eſtatute ẏ was a collateral warrātie to the heyre, bycauſe he could not conuey any title of diſcēt to the tenemēts by ẏ curteſy, but onely by his mother or other of his aūceſters. ꝛc. & that is the cauſe why it was collateral warrātie. But if a mā inherite take a wife, which haue iſſue a ſon betwene them, & the father dieth, & the ſon entreth in the land & endowed his mother, and after his mother alieneth

ẏ that she hath in her dower, to another in fee with warrantie accordyng, & after dieth, & the warrantie descendeth to the son, now ẏ son shalbe barred to demaund the same land, bicause of the sayd warrãtie, bicause that such collateral warrãty: of tenaunt in dower is not remedyed by any statute. The same lawe is where tenant for terme of life maketh an alienacion with warrantie. &c. & dieth, and the warrantie descendeth to him that had the reuercion or the remaynder. &c. they shal be barred by such warranty. &c. Cap. 13.

Also in the sayd case, if it so were, ẏ when the tenãt in dower alieneth. &c. the heyre was within age, & also at that time ẏ the warrãty descẽded vpõ him, he was with in age, in this case the heyre may after enter vpon the alienee, notwithstanding the warranty descẽded &c. bicause ẏ no laches shalbe adiudged in the heyre with in age, that he entred not vpõ the alienee, in the life of the tenãt in dower, but if the heyre was within age at the time of the alienacio. &c. and after he came to full age in the life of the tenant in dower, and so beyng of full age be entred not vpon the alienee in the life of tenant in dower, & after the tenant in dower dieth. &c. there peraduẽture the heire shalbe barred by such warrantie, bycause it shalbe acõpted his folye,

Cap. 13. that he beyng of ful age entred not in the life of the tenaunt in dower.

Also it is spokē in the end of the sayd statute of Glocester, ỹ speaketh of ỹ alienacion with warrāty made by the tenāt by ỹ curteſie in ſuch fourme. In the ſame maner ỹ heire of ỹ womā after ỹ death of the father & mother ſhal not be barred of action, if he demaūd ỹ heritage or the mariage of his mother by a writ of entre, ỹ his father aliened in the time of his mother, whereof no fine is leuied in the kinges court. &c. And ſo by force of the ſame ſtatute, if the huſbād of the wife alien ỹ heritage or mariage of his wyfe in fee wyth warrāty. &c. by his dede in the coūtrey this is clere law ỹ this warranty ſhal not barre the heire excepte he haue ynough by diſcente. &c. But the doubte is, if ỹ the huſband aliene the heritage of his wife by fine leuied in ỹ kynges court with warranty. &c. if thys ſhall barre the heire without any diſcent in value. &c. And as to ỹ I will ſay beare certayne reaſons, ỹ I haue harde ſpoken in this matter. I hard my maiſter ſyr Richarde Newton late chyefe Iuſtice of the common place, ſay ones in the ſame place, that ſuche warrantye

that

that the baron maketh by fine leuied in the kynges courte, shall barre the heyre though that he haue nothyng by discente bycause the statute saith, wherof no fine is leuied in the kinges court. And so by his other opinion this warrãty by fine, &c. abideth yet a collaterall warrantie, as it was at the common law not remedied by the sayd statute, because that the said statute excepteth the alienations by fine with warrantie, and some other haue said, and yet say the contrary, and this is their proufe, ẏ as by the same chapiter of the saide statute, it is ordeyned, ẏ the warranty of the tenant by ẏ curtesi shal not barre the heyres, excepte he haue ynough by discent, &c. thoughe that the tenant by ẏ curtesy leuy a fine of ẏ same landes with warranty, &c. as strõgly as he can, yet this warranty shall not barre the heire, excepte he haue inough by discẽt &c. And I thinke ẏ this is a lawe, for this that they say, ẏ it should be inconuenient to vnderstand the statute in such fourme that a man that hath nothyng but in the right of his wife, may by fine leuied by him selfe of the same tenementes that he hath but in the right of his wife wõ warranty. &c. shal barre the heire of ẏ sayd tenementes wõut any discent of fee simple &c. where the tenant by the curtesy cãnot do

Cap. 13.

Cap. 12. do it. But they haue ſaid, that the ſtatute ſhalbe vnderſtand after the fourme, that is to ſay, where ỳ ſtatute ſpeaketh, wher of no fine is leuied in the kynges courte, that is to ſay, wherof no lawfull fine is rightfully leuied in the ſame courte of the kynge, and that is wherof no fine of the huſbande and his wife is leuied in the kynges courte, for at the time of the making of the ſaid ſtatute euery eſtate of landes or tenementes ỳ any man or woman had, ỳ ſhoulde deſcende to his heyre was fee ſimple without condicion, or vpon certaine condicīō in deede or in law And becauſe that ſuche fine then myght lawfully haue ben leuied by ỳ huſbande and his wife, and the heires of the houſbande warranted, &c. ſuche warrantie ſhould barre the heyre. &c.

And ſo they ſay that this is the vnderſtandyng of the ſaide ſtatute, for if ỳ huſbande and the wife made a feoffement in fee by deede in the countrey, the heire after the deceaſſe of the huſbande and the wife, ſhall haue a writ of entre ſur cui in vita. &c. notwithſtandyng the warrantie of the huſbande. Then if no ſuche exceptiō was made in the ſtatute of the fine leuied. &c. then the heire ſhould haue ỳ writ of entre. &c. notwithſtandyng the fine leuied by the huſbande & the wyfe, becauſe

that

that the wordes of the statute before the exception of the fine leuied, &c. be general &c. ỳ is to say, that the heyre of the womã after the death of the husbande and the wyfe, shall not be barred of action, if he demaunde the heritage or the mariage of his mother by writ of entre, that his father alienedin the time of his mother. And so though the husbande & the wyfe alienedby fine, yet this is true, that the husbande alienedin the time of ỳ mother & thus it should be in the case of the statute except such wordes were, that is to saye whereof no fine is leuied in the kynges court. And so they say, ỳ is to vnderstand wherof no fine by the husband & the wyfe is leuied in the kingꝭ court, the whiche is lawfully leuied in suche case. For if the Justices haue knowledge ỳ a man that hath nothing but in the right of his wife will leuy a fine in his name onely, they will not nor ought not to take suche fine to be leuied by the husbande onely, without naming the wife, &c. therfore enquire of this matter. Cap. 13.

Also it is to wit, ỳ in such wordꝭ where the heyre demãdeth the heritage or mariage of his mother this woorde or is a disiunctiue, & is almuch to say if the heire demaunde the heritage of his mother, this is to be vnderstande, the tenementꝭ

that

Cap. 13.

that his mother had in fee simple by discent, or by purchase, or if the heire demaunde the mariage of his mother, that is to saye the tenementes ỳ were giuen vnto his mother in frankmariage.

The effect of this worde defendemus in a deede.

Also where it is moued in diuers deedꝫ these wordes in latin. Ergo ⁊ heredꝫ mei, ⁊c. warrantizabimus ⁊ imperpetuũ defendemus, it is to se what effect hath that worde defendemus, in such dedes. And it semeth ỳ it hath not the effect of warrãtise, nor cõprehendeth any cause of warrantise, for if it shuld be so ỳ it toke effect or cause of warrantise then it shoulde be put in some fines leuied in the kynges courte. And it was neuer seene, that this worde defendemus was in any fine but alonely this word warrantizabimus, by which it seemeth, ỳ this herbe warrantizo, maketh warranty, ⁊ is ỳ cause of warrantise ⁊ none other worde in our law.

Also if tenant in the tayle be seysed of tenementes deuisable by testament after the custome. ⁊c. and ỳ tenant in the taile alieneth the tenementes to his brother in fee, and hath issue and dieth, and after his brother denyseth by his testament the same tenementes to an other in fee, and byndeth him and his heires to warrantise, ⁊c. and dieth without issue it semeth that this warrantie shall not barre the

issue

issue in the tayle if he will sue hys writte of Formedone bicause that this warrantie descendeth not to the issue in the tayle in so much that the vncle of the issue was not bound by force of the same warrantye in his life. And the proofe of thys, that he could not warrant the land in his life is in so muche that the deuise coulde not take any execucion or effect, but after his deceals and in so muche that the vncle in his life was not holde to warranty, thys proueth that it may not discend frō hym to the issue in the tayle. &c. for nothynge may descende fro the auncestor to his heyre but the same that was in the auncestor. Also a warranty may not go after the nature of tenemētes by the custome. &c. but only after the fourme of the cōmon law. For if tenaunt in tayle be seysed of tenementes in borroughe English, where the custome is, that all tenementes wythin the same borroughe ought to descende to the yongeste sonne, and he discontinueth the tayle with warrantyse. &c. and hath issue two sonnes, and dyeth seysed of other landes and tenementes in the same borroughe in fee simple, to the value or more of the tenementes tayled. &c. yet the yongest sonne shal haue a writ of formedone of the tenementes tayled & shall not be barred by the warrantise of his father though Cap. 13.

Warrāty shal ensue the course of the cō mon law.

Cap. 13. inough to him descēded in fee simple, fro the same father after the custome, &c. for this that the warrantie descendeth vpon the elder brother ỹ is in full life. &c. and not vpon the yōger sonne.

In the same maner it is of collateral warrantise made of such tenemēts where the warrantise descendeth to the elder sonne. &c. this shal not barre the yonger sonne. &c.

In the same maner it is of tenemētes in ỹ shire of Kent, which be called Gauelkind, ỹ which tenemētes be departable amōge the brethrē. &c. after ỹ custome. &c. if any such warrāty be made by their aūcestors, such warrātise descendeth al only to the heyre, ỹ is heire by the cōmon law, & not all the heires which be heires of such tenemētes after ỹ custome. &c. vt patet. T. 22. E. 4.

Also if a tenaunt in taile haue issue two doughters by diuers ventres, and dieth, and the doughters enter, and a straunger disseiseth thē of the same tenementes, & one of the doughters releaseth by her dede to the disseisour all her righte, & bindeth her & her heyres to warrātise, & dieth without issue: in this case the sister that survyueth may wel enter, and put out the disseisour of

all

al the tenementes, for this that such warrantyse is no discontinuance nor collaterall warrātise to the sister that survyueth for this that they be of half bloud, and the one may not be heire to thother after the course of the common lawe. But otherwise it is where there be doughters of the tenant in the tayle by one selfe venter. Cap.13.

Also if tenāt in the taile let tenementes to another for terme of hys lyfe, the remaynder to another in fee, and the collaterall auncestor confirmeth the estate of the tenaunt for terme of lyfe, and bindeth him, & his heyres to warrante for terme of lyfe, of the tenaūt for terme of lyfe, and dieth, & the tenant in the tayle hath issue and dyeth. Nowe this issue is barred to aske the tenementes, by wyrt of Formedone, durynge the lyfe of the tenaunt for terme of lyfe, bycause of the collaterall warranty descended vpon the issue in the taile. But after the decese of the tenāt for terme of life, the issue shal haue a Formedone. &c. & vpon this I haue hard a reson, that this case shall proue an other case, that is to saye, if a man lette his lande to an other, to haue and to holde vnto hym and to his heyres for terme of an others lyfe, if the lessee dyeth, lyuynge hym to whose lyfe. &c. and a straunger entreth in the lande, that the heyre of the lessee

Cap. 13. may put him out, for this that in the case next aforesaide, in so muche that a man may binde him and his heires to warraunt the tenant for terme of life al onely, during the life of the tenant for terme of life, and that warrantise descendeth to the heire of him that made the warrantise, the whiche warrantise is no warrantise of inheritance, but all onely for terme of anothers life, by the same reason where tenement? be let to a man to haue and to holde to him, and to his heires for terme of anothers life, if the father die, lyuyng he to whose life. &c. his heirs shall haue the tenementes, [liuynge] him to whose life, &c. for they haue said ỳ if a mā graūt an annuity to an other to haue and to take to him, & to his heires for terme of an others life, if the grauntee die. &c. that after his heire shal haue the annuity duryng the life of him, to whose life, &c. Quere de ista materia.

But wher such lese or graunt is made to a mā & his heires for terme of yeres in this case the heire of ỳ lessee or ỳ grauntee shall neuer haue, after ỳ death of ỳ lessee or the grauntee, that ỳ is so letten or grāted for this that it is chatell reall and all chatels reals by the common lawe shall come to the executours of the graunte or of the lessee, and not to the heyre. &c.

Also

Also in some case it may be, that howe beit that a collaterall warrãtise be made in fee, &c. yet such warrantise may be deseted and adiented. Cap. 13.

As if the tenant in the tayled, discontinue the taile in fee, and the discontinue is disseised, and the brother of the tenant in the tayle releaseth by his deede to the disseisour all his right, &c. with warrantise in fee, and dieth without issue, and the tenant in the tayle hath issue, & dieth now the issue is barred of his action by force of the collaterall warranties descẽdyng vpon him, but if after this the discontinue enter vpon the disseysour, then may the heyre in the tayle haue his actiõ of Formedon, &c. for this ỹ the warrantie is adiented and deseted. For when the warrantise is made vnto a man vpon any estate that he then had, if the estate be deseted, the warrantie is deseted.

In the same maner it is, if the discontinue make a feoffemẽt in fee, reseruing to him certayne rente, and for defaute of payment a reentre, &c. and a collaterall ancester releaseth to the feoffee that hath estate vpon condicion, &c. and dieth without issue, though that the warrantise descende vpon the issue in the tayle, yet if after the rent be behinde, and the discontinue entreth into the lande, &c. then the

Cap. 13. issue in the tayle shall haue his recouerie by a writte of Formedone, for this ỳ the warrantie collaterall is defeted. And so if any such collateral warrantie be pleaded against the issue in the taile in his action of Formedone, he may shew the mattier as it is aforesayd, how the warrantie is defeted, and so he may well mayntayne his action.

Also if tenant in the tayle make a feoffment to his vncle, & after his vncle maketh a feoffemente in fee with warrantise. &c. to another, and after the feoffee of the vncle enfeoffeth agayne the same vncle in fee, and after the vncle enfeffeth a straunger in fee, without warrantise and dieth without issue, and the tenaunt in the tayle dieth, if the issue in the tayle wyl bring his writ of Formedon against the staunger that commeth in by feoffement of the vncle, in this case the issue shall neuer be barred by the warrantie that was made by the vncle to the saide fyrste feoffee of his vncle, for this that the sayde warrantise was defeted and aniented, for this that the vncle tooke agayne to him as greate estate of his said first feffee, to whom the warrantie was made, as the same feffee had of him. And the cause why the warrãty is anieted in this case is this, that is to say, that if the war-

warrantise were in his force, the the vncle shal warrante vnto hym selfe, whiche may not be, but if ỳ feoffee made estate to the vncle for terme of lyfe, or in fee tayle saupnge the reuercyon vnto hym. &c. or that he make a gift in the taile, to the vncle, or a lease for terme of life, the remainder ouer. &c. in this case the warrantise is not all vtterly anienting, but it is put in suspence, during the estate that the vncle hath, for after this, that the vncle is dead without issue, then he in the reuertion, or he in the remaynder shall barre the issue in the tayle in his writ of formedon by ỳ collaterall warrantise in suche case. &c. But otherwise it is where the vncle had as great estate in the lande by the feoffee to whome the warrantise was made, as the feoffee had of him. &c. causa patet. &c. Cap. 13.

Also if the vncle after such feoffement made with warrantise, or release made by him with warrantise, be attaint of felony, or outlawed of felony, such collaterall warrantie shall not barre nor greue the issue in the tayle, for thys that by the attainder of felony to the bloude is corrupte betwene them. &c.

Also if tenaunte in the tayle be dysseysed, and after maketh a dede of release to the disseysour with warrantise in fee, and after the tenant in the tail is atteint

Cap. 13. or outlawed of felonie, and hath issue and dieth in this case ỳ issue in the tayle may enter vpon the disseysour.

And the cause is for this, ỳ nothynge maketh discontinuance, in this case, but the warrantie, that could not descende to the issue in the taile, for this that the bloud is corrupt betwene him ỳ made the warrãtie & the issue in the taile. For the warrãtise alway abideth at the cõmon lawe, & the common lawe is such ỳ when a man is outlawed or atteynt of felony, whiche outlawrye is an attaynder in the lawe, that the bloud betwene him & his sonne, and all other whiche shoulde be saide as heyres, is corrupt so that nothyng by discent maye discende to any that maye be said his heyre by the cõmon law. And the wife of suche a man, that is so attaynt of felony shall neuer be endowed in the tenementes of the husband so attaint.

And the cause is for this, ỳ men should more eschewe to do felonies. &c. but the issue in the taile as to the tenementes tayled, is not in such case barred, bycause he is inherited by force of the statute & not by the course of the common lawe. And therefore suche attaynder of his father or of his auncestors in the tayle. &c. shall not put him out of his right that he shoulde haue by force of the tayle. &c.

Also

Also if tenaunt in the tayle enfeoffee his vncle, the whiche enfeoffeth an other with warrantie.&c. if after the feoffee by his dede releasse to the vncle all maner of warranties, or all maner of couenantes reals, or all maner of demandes, by suche releasse the warrantye is extincte. And if the warranty in suche case be pleaded agaynste the heyre in the tayle that bryngeth hys writte of Formedone, to barre the heyre of his action, if the heyre haue and pleade the sayde releasse.&c. he shall defete the plee in barre.&c. And manye other cases and matters be there, whereby a man may defeate warranties. Lap.131

And it is to witte, that in the same maner as collateral warranty may be defeted by matter in deede or in lawe, in the same maner maye lineall warrantise be defeated.&c. For if the heyre in the tayle bryng a writ of Formedone and a lineal warrantye of his auncestor, inheritable by force of the tayle, be pleaded agaynste him, with that, that inough to him is descended of fee simple by the same aūcestor, that made the warrāty, if the heyre that is demandant maye adnul and defete the warrantye this suffiseth to hym for the discent of other tenementes of fee simple maketh nothyng to barre the heyre without warranty.&c.

Finis.

¶ Here beginneth the Table of this present booke.

NOw haue I made for the my sonne three bokes, the first is of estate that menne haue of landes or tenementes, that is to saye.

Tenaunt in fee simple. ca.i.fol.ii.
Tenaunt in fee tayle. ca.ii.fol.v.
Tenaunt in the tayle after possibility of issue extinct. ca.iii.fol.vii.
Tenaunt by the curtesie of Englande. cap.iiii. folio.ix.
Tenaunt in dower. cap.v.fol.eod.
Tenaunt for terme of lyfe. ca.vi.fo.xiii.
Tenant for terme of yeres. ca.vii.fo.eo.
Tenaunt at will. cap.viii.fo.xvi.
Tenãt by copy of court rol. cap.ix.fo.xvii.
Tenaunt by the yard. ca.x.fo.xix.

¶ The seconde booke.

Homage. ca.i.fo.xx.
Fealtie. ca.ii.fo.xxi.
Escuage. ca.iii.fo.xxii.
Knightes seruice. ca.iiii.fol.xxiiii.
Socage. ca.v.fol.xxviii.
Franke almoigne. ca.vi.fol.xxxii.
Homage auncestrel. ca.vii.fo.xxxv.
Graund sergeantie. ca.viii.fo.xxxvii.
Petite sergeantie. ca.ix.fo.xxxix.

Tenure

The table.
Tenure in burgage. ca.x.fol.xx.
Tenure in villenage. ca.xi.fo.xii
Of thꝛee maner of rentes, that is to ſay. Rent ſeruice, rent charge, and rent ſecke cap.xii. fol.i.
¶ And theſe two ſmall bookes haue I made foꝛ thee, foꝛ to vnderſtande better certayne chapiters of the auncient bookꝭ of tenures.

The thirde booke.

Parceners by the common law.
cap.i. fol.lvii
Parceners by the cuſtome.cap.ii.fol.lxii.
Joyntenauntes. Cap.iii.fol.lxv.
Tenauntes in common. cap.iiii.fo.lxix.
Eſtates vpon condicion, cap.v.fo.lxxviii.
Diſcentes. ca.vi.fo.xcvii
Continuall clayme. cap.vii.fol.C.iii
Releaſſes. cap.viii.fo.c xi.
Confirmacions. ca.ix.fol.cxxvi.
Attournement. cap.x.fol.cxxxii.
Diſcontinuance. cap.xi.fol.cxli.
Remitter. ca.xii. fol.clvi.
Warrantie, that is to ſay, warranty liniall, warrantie collateral, and warrantie that beginneth by diſſeyſin. cap.xiii. fol.clxv.

Here endeth the table.

And know thou my ſonne, that I will not that thou beleue, that all that I haue ſaid in the ſayd bookꝭ is lawe, for that will I not take vpon me nor preſume. But of thoſe thynges that be not lawe, enquyre and learne of my wyſe mayſters learned in the lawe. Notwithſtandyng though that certain thinges that be noted and ſpecified in the ſayd bokes be not lawe, yet ſuche thinges ſhall make the more apte and able to vnderſtande and learn the argumentes and the reaſons of the lawe. For by the argumentes and the reaſons in the lawe, a man may more ſooner come to the certayntie and to the knowledge of the lawe.

Lex plus laudatur.
Quando ratione probatur.